

PROTECTING ACCESS TO CARE
ACT OF 2017

GENERAL LEAVE

Mr. GOODLATTE. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days to revise and extend their remarks and include extraneous material on H.R. 1215.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Virginia?

There was no objection.

The SPEAKER pro tempore. Pursuant to House Resolution 382 and rule XVIII, the Chair declares the House in the Committee of the Whole House on the state of the Union for the consideration of the bill, H.R. 1215.

The Chair appoints the gentleman from Louisiana (Mr. GRAVES) to preside over the Committee of the Whole.

□ 1407

IN THE COMMITTEE OF THE WHOLE

Accordingly, the House resolved itself into the Committee of the Whole House on the state of the Union for the consideration of the bill (H.R. 1215) to improve patient access to health care services and provide improved medical care by reducing the excessive burden the liability system places on the health care delivery system, with Mr. GRAVES of Louisiana in the chair.

The Clerk read the title of the bill.

The CHAIR. Pursuant to the rule, the bill is considered read the first time.

The gentleman from Virginia (Mr. GOODLATTE) and the gentleman from Michigan (Mr. CONYERS) each will control 30 minutes.

The Chair recognizes the gentleman from Virginia.

Mr. GOODLATTE. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, the bill before us today is modeled on California's highly successful litigation reforms that have lowered healthcare costs and made healthcare much more accessible to the people of that State.

Because the evidence of the effects of those reforms on lowering healthcare costs is so overwhelming, the Congressional Budget Office has estimated that, if the same reforms were applied at the Federal level, they would save over \$50 billion over a 10-year period.

Because the evidence that those reforms increase access to healthcare is so overwhelming, they are supported by a huge variety of public safety and labor unions, community clinics and health centers, and organizations dedicated to disease prevention, all of which have seen the beneficial effects of these reforms in California.

So popular are these reforms among the citizens of California that a ballot initiative to raise the damages cap, backed and funded by trial lawyers, was defeated by an over 2-to-1 margin in 2014.

This bill's commonsense reforms include a \$250,000 cap on inherently unquantifiable noneconomic damages and limits on the contingency fees law-

yers can charge. They allow courts to require periodic payments for future damages instead of lump sum awards so bankruptcies in which plaintiffs would receive only pennies on the dollar can be prevented. They include provisions creating a "fair share" rule by which damages are allocated fairly in direct proportion to fault.

This bill does all this without in any way limiting compensation for 100 percent of plaintiffs' economic losses, which include anything to which a receipt can be attached, including all medical costs, lost wages, future lost wages, rehabilitation costs, and any other economic out-of-pocket loss suffered as the result of a healthcare injury. Far from limiting deserved recoveries in California, these reforms have led to medical damage awards in deserving cases in the \$80 million and \$90 million range.

Unlike past iterations, this bill only applies to claims concerning the provision of goods or services for which coverage is provided in whole or in part via a Federal program, subsidy, or tax benefit, giving it a clear Federal nexus. Wherever Federal policy directly affects the distribution of healthcare, there is a clear Federal interest in reducing the costs of such Federal policies.

The legislation before us today also protects any State law that otherwise caps damages—whether at a higher level or lower than the caps in the bill—or provides greater protections that lower healthcare costs.

When President Ronald Reagan established a special task force to study the need for Federal tort reform, that task force concluded as follows: "In sum, tort law appears to be a major cause of the insurance availability and affordability crisis which the Federal Government can and should address in a variety of sensible and appropriate ways."

Indeed, the Reagan task force specifically recommended "eliminate joint and several liability," "provide for periodic payments of future economic damages," "schedule"—that is, limit—"contingency fees" of attorneys, and "limit noneconomic damages to a fair and reasonable amount." All of these recommended reforms are part of the bill before us today.

I urge my colleagues to support this legislation that would enact much-needed commonsense and cost-saving litigation reforms that would increase healthcare accessibility for all.

Mr. Chairman, I reserve the balance of my time.

HOUSE OF REPRESENTATIVES,
COMMITTEE ON ENERGY AND COMMERCE,

Washington, DC, March 21, 2017.

Hon. BOB GOODLATTE,
Chairman, Committee on the Judiciary,
Washington, DC.

DEAR CHAIRMAN GOODLATTE: I write in regard to H.R. 1215, Protecting Access to Care Act of 2017, which was referred in addition to the Committee on Energy and Commerce. I wanted to notify you that the Committee will forgo action on the bill so that it may

proceed expeditiously to the House floor for consideration.

The Committee on Energy and Commerce takes this action with our mutual understanding that by foregoing consideration of H.R. 1215, the Committee does not waive any jurisdiction over the subject matter contained in this or similar legislation and will be appropriately consulted and involved as this or similar legislation moves forward to address any remaining issues within the Committee's jurisdiction. The Committee also reserves the right to seek appointment of an appropriate number of conferees to any House-Senate conference involving this or similar legislation and asks that you support any such request.

I would appreciate your response confirming this understanding with respect to H.R. 1215 and ask that a copy of our exchange of letters on this matter be included in your committee's report on the legislation or the Congressional Record during its consideration on the House floor.

Sincerely,

GREG WALDEN,
Chairman.

HOUSE OF REPRESENTATIVES,
COMMITTEE ON THE JUDICIARY,
Washington, DC, March 21, 2017.

Hon. GREG WALDEN,
Chairman, Committee on Energy and Commerce,
Washington, DC.

DEAR CHAIRMAN WALDEN: Thank you for consulting with the Committee on the Judiciary and agreeing to be discharged from further consideration of H.R. 1215, the "Protecting Access to Care Act," so that the bill may proceed expeditiously to the House floor.

I agree that your foregoing further action on this measure does not in any way diminish or alter the jurisdiction of your committee or prejudice its jurisdictional prerogatives on this bill or similar legislation in the future. I would support your effort to seek appointment of an appropriate number of conferees from your committee to any House-Senate conference on this legislation.

I will seek to place our letters on H.R. 1215 into the Congressional Record during floor consideration of the bill. I appreciate your cooperation regarding this legislation and look forward to continuing to work together as this measure moves through the legislative process.

Sincerely,

BOB GOODLATTE,
Chairman.

Mr. CONYERS. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, H.R. 1215 will do little to protect Americans' access to safe and affordable healthcare. Instead, it will deny victims of medical malpractice and defective medical products the opportunity to be fully compensated for their injuries and to hold wrongdoers accountable.

This legislation imposes various restrictions on lawsuits against healthcare providers concerning the provision of healthcare goods or services that would apply regardless of the merits of the case, the misconduct at issue, or the severity of the victim's injury.

There are so many problems with this bill, but to begin with, this bill would cause real harm by severely limiting the ability of victims to be made whole. For instance, the bill's \$250,000 aggregate limit for noneconomic damages, an amount established more than

40 years ago pursuant to a California statute, would have a particularly adverse impact on women, children, the poor, and other vulnerable members of our society.

These groups are more likely to receive noneconomic damages in healthcare cases because they are less able to establish lost wages and other economic losses. Women, for example, are often paid at a lower rate than men, even for the same job. Also, they are more likely to suffer noneconomic loss, such as disfigurement or loss of fertility. Imposing a severe limit on noneconomic damages, therefore, hurts them disproportionately.

□ 1415

Finally, this bill is particularly harmful for veterans, members of the military, and their families. Because the bill prevents State tort law in any healthcare-related lawsuit that includes any coverage provided by a Federal health program, all cases arising from substandard care received in a Veterans Administration facility or a military hospital would be subject to the bill's restrictions.

As a diverse coalition of veterans organizations noted in their letter of opposition, H.R. 1215 would limit the ability of veterans and military families to hold healthcare providers, drug manufacturers, and medical products providers accountable for pain and suffering and death that result from substandard care, preventable medical errors, and defective drugs and devices.

For these and other reasons, I implore and urge my colleagues to oppose H.R. 1215.

Mr. Chairman, I reserve the balance of my time.

Mr. GOODLATTE. Mr. Chairman, I yield 2 minutes to the gentleman from Florida (Mr. GAETZ), a member of the Judiciary Committee.

Mr. GAETZ. Mr. Chairman, I thank the gentleman for yielding.

Today, in the Congress, too many Republicans and Democrats are obsessed with health insurance, often at the expense of the reforms that could reduce the cost of healthcare. If we cut the cost of healthcare, we make solutions far more attainable for affordable coverage.

I support this tort reform legislation because it will make healthcare in America more accessible and less expensive.

Defensive medicine costs Americans over \$50 billion. Commonsense reform will eliminate these costs, help patients afford healthcare, all while reducing the Federal deficit.

It is no surprise that defensive medicine costs so much. One survey recently reported that 93 percent of doctors practice defensive medicine due to a broken tort system.

It is outrageous that we force doctors to subject patients to costly, unnecessary, and occasionally harmful tests just to avoid frivolous lawsuits.

Let's go back to performing medical tests when needed for the patient, not

to simply avoid exposure in litigation for insurance companies. This will lower healthcare costs.

The New England Journal of Medicine found that 1 in every 14 doctors gets sued each year. An earlier Harvard study revealed that 40 percent of these malpractice suits were groundless, yet over a quarter of these frivolous cases are settled, and the average payout was \$300,000.

Groundless cases overburden our legal system, making it harder for people with legitimate grievances to have their day in court.

Frivolous claims drive up the cost of insurance for all healthcare providers, driving many physicians away from the healthcare profession. We need more doctors and hospitals, not less. Without reform, we get higher costs, fewer doctors, a larger Federal deficit, and worse healthcare outcomes.

Let's pass this bill and start delivering on more accessible healthcare for the American people.

Mr. CONYERS. Mr. Chairman, I yield 3 minutes to the distinguished gentleman from Tennessee (Mr. COHEN).

Mr. COHEN. Mr. Chairman, I thank Ranking Member CONYERS for yielding me time. Mr. Chair, I share your grief over last night's loss. Sorry about that.

Mr. Chairman, this bill is a loss, too. It is a loss to people who have been injured by defective drugs, defective medical devices, been harmed in nursing homes, or been harmed by medical malpractice because it sets a cap on noneconomic damages of \$250,000, no matter whom the person is, whatever their position was, no matter what damages they suffered.

Trial lawyers aren't the most liked people in America. They are a little bit above Congress people, I think, but it is right in there with used car salesmen. None of the three of us are doing real good. So it is easy to kind of beat us up.

But people like their doctors. I see Dr. ROE over there. People like doctors. Doctors provide healthcare, if they are allowed to by Federal law and given the opportunity to get reimbursed and have a system. People don't generally like trial lawyers. But the fact is, trial lawyers do a public service because they represent people. When they do it on contingency fees, they do it for people who wouldn't have the money to hire a lawyer, necessarily, but have been harmed. And they go in on the idea that sometimes they will get nothing, but if they win, they get a contingency fee, and they give representation to people who otherwise couldn't afford it.

When they win, they win because a jury—which is like a little focus group of America—says there was a duty that the doctor breached and a harm done to the patient and the patient should be compensated.

My chairman says this is just like California, and there he goes again with that Reagan stuff. Reagan was 40 years ago, I think, 35 years ago. What-

ever. Californians thought this isn't California's law. This goes further than California on joint liability. The fact is, when you eliminate joint and several liability in certain places, a certain part of it is California, a certain part of it isn't, it is less likely that the injured party is going to be able to collect.

It goes further in terms of setting a statute of limitations, but the big picture is States' rights. Normally, the folks on the other side of the aisle are all for States' rights. They are for States' rights when it comes to voting rights. They are for States' rights when it comes to civil rights. They are for States' rights on all kinds of things that generally tend to tamp down the lower economic folk in our country, particularly in the South.

But here on medical malpractice, which has always been a province of the States, they want to usurp it and make a Federal standard that applies to everybody.

If a State hasn't set a cap on damages, then the Federal cap of \$250,000 would go into place. So if you have a State that says it is unconstitutional to have a cap because you have got a right to a jury trial, then you might not be able to have that cap, and you will have this \$250,000 cap set.

There are all kinds of problems with Federalism, all kinds of problems with people who have been injured getting compensated, and other problems.

Go Tigers.

Mr. GOODLATTE. Mr. Chairman, I yield 2 minutes to the gentleman from West Virginia (Mr. JENKINS).

Mr. JENKINS of West Virginia. Mr. Chairman, I thank the gentleman for this opportunity. I have been sitting here listening very carefully to this debate. It sounds like a partisan fight. Democrats say this is a bad bill. Republicans say it is a good bill. If you are watching at home, you think: Here we go again. Just gridlock in Washington. Can't get something done.

Well, let me tell you and let me suggest that preserving and protecting access to care should not be a partisan issue. Why do I say that? I am from West Virginia, and 14 years ago we passed medical liability reform very similar to what we are getting ready to pass today, including \$250,000 caps on noneconomic damages.

Why do I know it was not a partisan issue back then is because the Governor of West Virginia who introduced the bill, House Bill 2122, was Congressman Governor Bob Wise. Bob Wise had been a Member of Congress for 18 years as a Democrat here in Congress. He introduced the bill 14 years ago in West Virginia. He signed the bill. It was his bill.

The West Virginia Legislature, the House of Delegates, was 68 percent Democrat. The West Virginia Senate was 70 percent Democrat. A Democrat Legislature, a Democrat Governor, and the reform is just like what we are getting ready to pass today.

Here is what Democrat Governor Bob Wise said about the bill and why they did it. What was the goal? "To work together towards a common goal preserving the healthcare system that serves all West Virginians."

What else did Governor Democrat Bob Wise say? He said, "This is a prime example of how government can work for the people," when he passed this bill and signed it.

On the day he signed the bill, this is what Democrat Bob Wise's newsletter said: "My number one commitment is the health and safety of the citizens of West Virginia?"

The CHAIR. The time of the gentleman has expired.

Mr. GOODLATTE. Mr. Chairman, I yield an additional 1 minute to the gentleman.

Mr. JENKINS of West Virginia. Mr. Chair, this should not be a Democrat/Republican issue. This should be an American healthcare issue. This should be preserving and protecting access to quality care. Just like Democrat Congressman Bob Wise in West Virginia 14 years ago set the example, we ought to set the example here of passing this with strong bipartisan support. This is quality care for the American citizens.

Mr. CONYERS. Mr. Chairman, I yield 2 minutes to the gentleman from New York (Mr. NADLER), a senior member of the House Judiciary Committee.

Mr. NADLER. Mr. Chairman, I thank the gentleman for yielding.

Yes, the previous speaker is right. This shouldn't be a partisan issue, but the Republican Party in both houses has been doing its best to destroy healthcare for the American people in the last couple of months. This is just a different piece of the same plot. Bob Wise didn't always have the best judgment.

This cruel legislation does exactly the opposite of what its title states. It would place an artificial and very low cap on noneconomic damages in medical malpractice cases, and it would lock that figure into law without adjustment for inflation, which would reduce its value almost to zero over time.

By capping damages, this bill would ensure that many victims of medical malpractice will not be fairly compensated for their injuries. Many other victims may be unable even to file a case in the first place because they will be unable to retain a lawyer. That is because medical malpractice cases often require significant upfront costs, as high as \$100,000 on average, and few attorneys will take a case if the cap on damages means that there will be no reasonable likelihood of recouping their costs.

This bill's cap on noneconomic damages is particularly insidious because of its discriminatory effect on many women, children, and seniors. They often have little or no lost wages to calculate, and, therefore, they may recover very little in the form of economic damages. But they may still have suffered a real and lasting injury

that deserves compensation. This includes women who may have chosen to stay home and raise a family, children who have yet to begin their careers, or seniors who have retired and left the workforce.

Why should they be punished under this bill and get very little compensation for a lost limb or something else?

The law recognizes that pain and suffering, and other noneconomic damages, are worthy of compensation, but supporters of this bill think Congress, not juries, should decide what those injuries are worth, and it is shamefully little.

This legislation is based on the California law that includes a cap of \$250,000 for noneconomic damages, but it was enacted back in 1975. Whether or not that was an appropriate figure 40 years ago, in today's dollars, it is clearly inadequate.

After adjusting for inflation, the cap would need to be approximately \$1.128 million to be the same as the \$250,000 cap was when it was enacted.

The CHAIR. The time of the gentleman has expired.

Mr. CONYERS. Mr. Chairman, I yield the gentleman an additional 30 seconds.

Mr. NADLER. Thinking of it another way, that \$250,000 cap is now worth just over \$56,000, nearly a fifth as much.

Even assuming that \$250,000 is the appropriate figure today, fairness demands that this cap be indexed for inflation going forward so that we do not see a similar erosion of value. But this bill locks in an already low cap and lets it dwindle away until it is worth essentially zero.

I offered an amendment to adjust the cap to reflect 40 years of inflation, and to index it going forward, but the Rules Committee did not make it in order. Instead, we are forced to vote on a bill that, over time, will consider pain and suffering to be worth nothing at all.

This bill would not reduce the cost of malpractice insurance, it would not drive bad doctors out of practice, and it would certainly not protect patients.

What it would do is give a free ride to a healthcare provider, or a healthcare entity, that seriously harms a patient or a consumer.

I urge my colleagues to reject this unfair and unnecessary legislation.

Mr. KING of Iowa. Mr. Chairman, I yield 4 minutes to the gentleman from Tennessee (Mr. ROE).

Mr. ROE of Tennessee. Mr. Chairman, I rise today in support of H.R. 1215, the Protecting Access to Care Act of 2017, a much needed piece of legislation aimed at reforming medical malpractice law in order to help drive down the cost of providing healthcare and, thereby, making it more affordable for all Americans.

I had the privilege of practicing medicine in the great State of Tennessee for 31 years before coming to Congress. The one thing that took away some of the joy from that practice was the threat of frivolous lawsuits.

Because of trial attorneys, over the years, the premiums for malpractice insurance have ballooned to levels that make it difficult for providers to practice and are driving more people out of practice, away from small practices, and into large hospital systems just so they can survive as a practitioner. Worse still, the jury awards aren't going to the victims of actual malpractice.

□ 1430

In Tennessee, prior to implementing some malpractice reforms, over half the premium dollars were paid out to attorneys, and less than 40 cents of every dollar paid out have gone to people who have actually been injured. So we are not compensating the injured party.

Thankfully, States like my home State of Tennessee are taking action and have enacted much-needed reforms in the last decade, and the costs associated with providing care have plummeted since then. In 2008, the Tennessee Medical Malpractice Act was signed into law and created requirements that the plaintiff in a healthcare liability action provide the defendant with a pre-suit notice of the claim as well as a qualified expert to review the case and certify it has merit.

Adding onto these reforms, in 2011, the Tennessee Civil Justice Act was signed into law, and it included a \$750,000 cap for noneconomic damages and a cap on punitive damages at the greater of twice the compensatory damages or \$500,000.

With these changes, between 2008 and 2014, the number of medical malpractice lawsuits in Tennessee decreased by 36 percent, from 584 to just 374. And, Mr. Chairman, between 2009 and 2014, the annual medical malpractice premium for an OB/GYN doctor like myself decreased from \$52,000-plus to \$33,000-plus, nearly a \$20,000 decrease in premiums per year.

Those of us who were here in 2009 when the Affordable Care Act was debated remember that President Obama acknowledged that the cost of defensive medicine was a bipartisan concern and something that he wanted to address. Despite the fact that our legislation is modeled on a California law that has stood the test for 40 years through both Republican and Democratic Governors, Democrats made no serious attempt to address medical malpractice as their healthcare bill was pushed through, which is yet another flaw of the ACA.

Today's bill is common sense. With these reforms, we will ensure patients, not trial attorneys, are compensated for legitimate malpractice claims—and there are legitimate claims out there. But we will also prevent frivolous litigation from moving forward.

For those concerned about the 10th Amendment, this bill respects States' rights and only subjects claims with a Federal nexus to this law, while giving a great deal of latitude to States to act in their own accord.

Mr. Chairman, I loved what I did while I was in practice. I had the chance to deliver about 5,000 babies, and it never felt like a job. It is just what I did and enjoyed doing. But at a time when healthcare costs are spiraling out of control, an easy fix like H.R. 1215 just makes sense and is just another piece of the puzzle to help the costs of healthcare go down.

I strongly support the much-needed reforms in this legislation, and I urge my colleagues to vote in favor of final passage.

One final thing, Mr. Chairman. I have a list here of our premiums in the State of Tennessee, and under every specialty listed here—and there are numerous—there were dramatic decreases in each of these.

Mr. CONYERS. Mr. Chairman, I yield 2 minutes to the gentlewoman from Texas (Ms. JACKSON LEE), the most active Member in the 115th Congress.

Ms. JACKSON LEE. Mr. Chairman, I thank the gentleman for yielding.

Mr. Chairman, I would say to my colleagues that this is about bad medicine, not good medicine, and it is about undermining good healthcare, as we have seen in the TrumpCare saga, causing some 49 million people to lose their insurance. Here we go again.

I would offer to say that the most difficult, hurtful, and harmful aspect of this particular legislation is that it would make it more difficult for plaintiffs to seek redress for medical injuries that have been proven in court.

In addition, it proposes to make dangerous and potentially unconstitutional changes to our Nation's Federal system, intruding on State sovereignty, the very thing that Republicans seem to relish and to support, because this bill attempts to preempt the several areas of tort law that have been traditionally reserved to the States.

I would tell my good friends in Tennessee and West Virginia: Deal with your States, just as other individuals deal with their own States.

This bill, as well, has a very difficult impact on medical malpractice. Because it was written so vaguely, the broad language sweeps into not only doctors and other medical professionals, but hospitals and clinics and almost every entity that contributes in any way to making any healthcare product or service available. That clearly impacts the healthcare of Americans.

When your child is injured through no fault of their own or your own, you need relief for that child. Interestingly enough, the American Bar Association that represents all lawyers, trial lawyers, of which there is an attempt to impugn their work, contempt for trial lawyers and the good work that they do. But the ABA says they are opposed to this bill, and they represent lawyers who fight every day to make sure the injustices don't happen.

But here is the real cause of my angst for this particular bill: "Medical

Error Leaves Family With Unanswered Questions."

"Olivia was a senior in high school in Santa Monica, California, an accomplished scholar, actress, and musician who had earned early acceptance to Smith College."

The CHAIR. The time of the gentlewoman has expired.

Mr. CONYERS. Mr. Chairman, I yield the gentlewoman an additional 30 seconds.

Ms. JACKSON LEE. "Olivia was born with a congenital heart condition."

She was going into college, but had a condition that caused her to go into the hospital. When she went in, she had a small procedure. Her vitals were dropping. Hospital staff waited more than 10 minutes before attempting resuscitation, but it was too late. She remained in a coma and died.

Mr. Chairman, I include the article in the RECORD.

MEDICAL ERROR LEAVES FAMILY WITH UNANSWERED QUESTIONS

Research has found that 440,000 Americans die every year from preventable medical errors each year.

Olivia was a senior in high school in Santa Monica, California, an accomplished scholar, actress, and musician who had earned early acceptance to Smith College.

Olivia was born with a congenital heart condition that was monitored throughout her childhood.

The fall that Olivia was supposed to start college, she underwent a routine procedure to help doctors figure out if she could be considered for a surgery that would improve her condition.

The procedure was completed without complications, but while Olivia was still under anesthesia, a cardiology fellow-in-training pulled the catheter lines, causing Olivia's heart rate, pulse, and blood pressure to drop rapidly. Even though her vitals were dropping, hospital staff waited more than 10 minutes before attempting resuscitation. But it was too late.

Olivia would never regain consciousness and died that winter, never having lived her dream and attending college.

Her future was stolen from her, and immediately her family tried to understand what had gone wrong. They began to ask questions on how this could have happened, but they were given very few answers from the hospital.

Finally, the hospital gave her family incomplete medical records to sift through and find answers. They sought the help of an attorney because, despite their best efforts, they still did not fully understand what caused their daughter's death. But due to California's out dated \$250,000 cap on medical negligence damages, it was nearly impossible to find one.

Olivia's life was cut short by a preventable medical error, and unfortunately, she is not alone. In the U.S., preventable medical errors are the third leading cause of death.

Our focus should be on improving patient safety and preventing medical errors, not limiting the rights of injured patients and their families. Lawmakers who seek to limit the accountability of health care providers are seeking to limit our rights and our avenues to justice.

Don't our loved ones deserve better?

Ms. JACKSON LEE. Mr. Chairman, what do you want families to face—no relief? Or do you want these constant

errors to go unrecognized and reconciled? This bill will do that by denying the ability.

It provides immunity for healthcare providers who dispense defective or dangerous products. It makes it harder for victims to attain adequate legal representation, and it imposes a risk or loss on victims rather than wrongdoers. This bill undermines healthcare and it undermines good healthcare.

Mr. Chair, I include in the RECORD a letter from the American Bar Association opposing this bill.

AMERICAN BAR ASSOCIATION,
Washington, DC, February 27, 2017.

Re Concerns Regarding H.R. 1215, the "Protecting Access to Care Act of 2017."

Hon. BOB GOODLATTE,

Chairman, Committee on the Judiciary, House of Representatives, Washington, DC.

Hon. JOHN CONYERS, JR.,

Ranking Member, Committee on the Judiciary, House of Representatives, Washington, DC.

DEAR CHAIRMAN GOODLATTE AND RANKING MEMBER CONYERS: On behalf of the American Bar Association, which is the largest voluntary membership organization of legal professionals in the United States, consisting of more than 400,000 members from all 50 states, the District of Columbia and other jurisdictions, I am writing to express our opposition to H.R. 1215, the "Protecting Access to Care Act of 2017." I understand that your committee is scheduled to mark up this bill as early as tomorrow.

For over 200 years, the authority to determine medical liability law has rested in the states. This system, which grants each state the autonomy to regulate the resolution of medical liability actions within its own borders, is a hallmark of our American justice system. The states also regulate the insurance industry. Because of the roles they have played, the states are the repositories of experience and expertise in these matters. Therefore, the ABA believes that Congress should not substitute its judgment, as is proposed in H.R. 1215, for the systems that have evolved in each state over time.

Specifically, I would like to share with you the ABA's concerns and other views regarding key provisions in the proposed legislation relating to damages, proportionate liability, and contingent fees.

Damages. The ABA believes that compensatory damages should not be capped at either the state or federal level, and, as a result, we have serious concerns regarding Section 3(b) of H.R. 1215 that would cap noneconomic damages for a plaintiff's injuries at \$250,000 regardless of the number of parties against whom the action is brought or the number of separate claims or actions brought with respect to the same injury. For more than thirty years, the ABA has studied the research on federal and state legislative efforts to impose limits on noneconomic damages, including pain and suffering. Empirical research has shown that caps diminish access to the courts for low wage earners, like the elderly, children, and women; if economic damages are minor and noneconomic damages are capped, victims are less likely to be able to obtain counsel to represent them in seeking redress.

Those affected by caps on damages are the patients who have been most severely injured by the negligence of others. These patients who reside in communities around the country should not be told that, due to an arbitrary limit set by members of Congress in Washington, DC, they will be deprived of the compensation determined by a fair and impartial jury. The courts already possess

and exercise their powers of remittitur to set aside excessive jury verdicts, and that is the appropriate solution rather than an arbitrary cap. For these reasons, the ABA opposes those provisions in H.R. 1215, such as Section 3(b), which would place a dollar limit on recoverable damages and operate to deny full compensation to a patient in a medical liability action.

Proportionate Liability. Section 3(d) of H.R. 1215 would create a “fair share rule” under which each party would be liable only for its share of any damages, and, as a result, the provision would preempt existing state laws that provide for joint and several liability in medical liability cases. The ABA believes that, at the state level, the laws providing for joint and several liability should be modified to recognize that defendants whose responsibility is substantially disproportionate to liability for the entire loss suffered by the plaintiff should be held liable for only their equitable share of the plaintiff’s noneconomic loss. Although the ABA supports this principle and encourages other improvements to the tort laws at the state level, it opposes federal preemption of the medical liability laws of the states and territories. Therefore, the ABA opposes Section 3(d) to the extent that it would preempt existing state laws and to the extent that it would apply a proportionate liability rule to all damages, not just the plaintiff’s noneconomic damages.

Contingent Fees. Section 4(a) of H.R. 1215 would empower a court to reduce the contingent fees paid from a plaintiff’s damage award to an attorney, redirect damages to the plaintiff, and further reduce contingent fees in cases involving minors and incompetent persons. The ABA opposes sliding scales for contingent fees and other special restrictions on such fees. In 1985, the ABA created a Special Committee on Medical Professional Liability (“Special Committee”) to study the initiatives proposed at that time in an Action Plan of the American Medical Association Special Task Force on Professional Liability and Insurance. Among the initiatives was a recommendation of sliding scales on contingent fees, having effects comparable to the caps proposed here. After review, the Special Committee concluded the following:

“A sliding scale for contingency fees in medical malpractice litigation may very well reduce total awards for patient-victims by depriving them of representation by a trial lawyer sufficiently skilled at obtaining the highest appropriate award. Mandatory sliding scale systems could also inhibit claimants’ access to the court system by limiting the availability of counsel. And imposing sliding scales only in medical malpractice cases would, in effect, create different level of skills among available counsel for plaintiffs in medical malpractice cases from those available to claimants in other tort cases.”

As a result of this finding, the ABA adopted a policy in 1986 that “no justification exists for imposing special restrictions on contingent fees in medical malpractice actions.” Therefore, the ABA opposes the limits on contingent fees contained in Section 4 of H.R. 1215.

The American Bar Association remains committed to maintaining a fair and efficient justice system where victims of medical malpractice can obtain redress based on state laws, without arbitrary or harmful restrictions. We offer these perspectives for your consideration as you mark up H.R. 1215.

Sincerely,

THOMAS M. SUSMAN,

Director, Governmental Affairs Office.

Mr. CHAIR, as a senior member of the Judiciary Committee, I rise in strong opposition to

H.R. 1215, the so-called “Protecting Access to Care Act of 2017.”

I oppose this misguided and ill-considered legislation for several reasons.

Specifically, the bill before us should be rejected because:

1. H.R. 1215 violates state sovereignty;
2. H.R. 1215 applies well beyond medical malpractice;
3. Unjustifiably caps noneconomic damages, which will have a disproportionately adverse impact on women, the poor, and other vulnerable groups.
4. Provides unjustifiable immunity for health care providers who dispense defective or dangerous pharmaceuticals or medical devices;
5. Imposes an excessively short statute of limitations period;
6. Makes it harder for victims to obtain adequate legal representation; and
7. Inequitably imposes the risk of loss on victims rather than wrongdoers.

For over 200 years, the authority to determine medical liability has rested in the states.

This system, which grants each state the autonomy to regulate the resolution of medical liability actions within its own borders, is a hallmark of our American justice system.

H.R. 1215 would preempt state law in all 50 states with a rigid, uniform set of rules designed to make it more difficult for malpractice victims to obtain relief in the courts.

Victims injured by the negligent conduct of others, who have lost limbs, suffered traumatic brain injury, or lost their vision following medical procedures should not be subject to additional burdens of a possible limited recovery, currently available under state patients’ bills of rights and other protections under the Affordable Care Act.

The definitions in H.R. 1215 are written in such vague and broad language as to potentially sweep in not only doctors and other medical professionals, hospitals and clinics, but also every entity that contributes in any way to making any health care product or service available, including insurance companies, pharmaceutical manufacturers, health product manufacturers, pharmacists, nursing homes, assisted living facilities, and mental health treatment centers, and drug and alcohol rehabilitation facility, among others.

H.R. 1215 will do nothing to strengthen protections for patients.

It goes in the opposite direction, by excusing the health care industry from accountability for carelessness, and shifting the burden for shouldering the consequences of preventable medical injury to the injured patients, their families, their employers, their insurance companies, and taxpayers.

Current provisions of the Affordable Care Act prohibit insurance companies from denying coverage for preexisting conditions, mandate coverage for young adults and children under the age of 26, and secure lifetime coverage caps, ensuring patients receive the care they need.

Empirical research has shown that caps on damages, such as those envisioned by H.R. 1215, diminish access to the courts for the most vulnerable, such as low wage earners, like the elderly, children, and women.

The bill arbitrarily caps so-called “noneconomic loss”—which sweeps in essentially everything that is not loss of salary or additional medical expenses—at \$250,000 for the patient’s lifetime, punishing those patients with the most devastating, life-altering injuries.

The bill forces the injured patient to take the amounts received for future expenses resulting from the injury in a “structured settlement,” which may not match up with the patient’s actual needs as they arise, and would further reduce the amount the careless health care provider actually pays.

Preventable medical errors are the third-leading cause of death in the United States, with an estimated 440,000 deaths each year following a medical error or hospital-caused infection during a hospital stay.

Addressing this problem must be a national priority.

And although policies to promote and require safer practices are key to this effort, that is insufficient.

We cannot assign a government monitor to every hospital operating room and every doctor’s office.

Effective protection should also include enabling patients and their families to hold health care providers accountable for errors that cause harm.

H.R. 1215 would unfortunately take several major steps backward from this goal.

The bill twists important protections found in many state laws into an additional legal hurdle.

An extended statute of limitations protection allows patients who do not discover their injury until much later, sometimes many years after the medical procedure or intervention, to still have a chance to seek legal help.

But in the bill, the period in which an injured patient can seek legal help is actually shortened to one year.

The bill cuts off a patient injured as a young child if their family fails to bring legal action on their behalf, long before they are old enough to legally act on their own behalf.

This legislation would impose various restrictions on medical malpractice lawsuits, causing these restrictions to apply regardless of how much merit a case may have, the negligence at issue, or the severity of the issue.

If economic damages are minor and noneconomic damages are capped, victims are less likely to be able to obtain counsel to represent them in seeking redress in these personal injury malpractice cases that often operate under contingency fee.

Those affected by caps on damages are the patients who have been most severely injured by the negligence of others.

These patients who reside in communities around the country should not be told that, due to an arbitrary limit set by members of Congress in Washington, DC, they will be deprived of the compensation determined by a fair and impartial jury.

The courts already possess and exercise their powers of remittitur to set aside excessive jury verdicts, and that is the appropriate solution rather than an arbitrary cap.

I am concerned that H.R. 1215 would put patient safety at higher risk, by significantly undermining the accountability of those who provide patients with medical care.

H.R. 1215 undercuts patients in situations in which carelessness or misconduct by several health care providers combines to injure the patient.

It arbitrarily “divides” blame among those actors and then if one of them evades accountability for any reason, the others who caused the injury are excused from having to make up the difference, and the injured patient is short-changed.

H.R. 1215 shifts accountability away from the careless health care providers who caused the injury and onto “collateral sources,” such as the patient’s insurance company or employer, or the government, that pay for part of the patient’s medical expenses or other expenses resulting from the injury.

In effect, these other sources provide involuntary free insurance to careless health care providers.

The bill excuses doctors and other health care providers from any responsibility of looking into the safety and effectiveness of any medication or medical product, so long as it has been approved by the FDA.

Accordingly, I strongly oppose H.R. 1215 for these and many more reasons and urge my colleagues to reject this bill.

Mr. KING of Iowa. Mr. Chairman, I yield myself 5 minutes.

Mr. Chairman, first of all, the statement that this bill caps or limits States on economic or noneconomic damages is incorrect. In fact, I would point the gentlewoman from Texas to page 6 of the bill, that says, under State Flexibility, that specifies a particular monetary amount of economic or economic damages, there is no provision in this section that shall be construed to preempt State law. We wrote that specifically to respect the States’ rights.

I recall a number of these pieces of legislation that have come before this Congress. I can remember it back at least until 2007. I was uneasy about the constitutionality because it did reach in and preempt State law.

And I am a respecter of States’ rights, but we have a Federal interest in healthcare. That is the provision that is written into the bill. If there are Federal dollars involved, if it is a Federal program, then the Federal Government has an interest in limiting these damages.

We capped the damages in this bill, not the economic damages. Those real damages that are economic damages are fully compensated, without limit, without cap, and without the interference of this law, unless States choose to cap economic damages.

Noneconomic damages, however, are capped at \$250,000; and that \$250,000 cap is something that has existed in California State law for more than 40 years, signed into law by the very durable Jerry Brown. But if the States want to change that, if they want to raise the cap beyond \$250,000, that is their right to do so. We specify that in the bill.

I would like to discuss a need for this bill. It is necessary to preserve fiscal sanity in Federal healthcare policy. And I would like to point out, also, at the outset that this bill only applies to claims concerning the provision of goods and services for which coverage is provided in whole or in part by a Federal program, a Federal subsidy, or a Federal tax benefit. It is a clear, clear, Mr. Chairman, Federal nexus. Wherever Federal policy affects the distribution of healthcare, there is a clear Federal interest.

So, the bill’s commonsense reforms, which have been the law in California for over 40 years and that the CBO has scored a couple of times here—the previous score was \$54 billion; this score is \$50 billion—is over \$50 billion in savings to the people who are paying for healthcare in this country, and that includes our taxpayers and the healthcare users.

But the \$250,000 cap is reasonable. It has sustained itself over those 40 years in California, and it is good enough for other States to emulate.

When I hear some pushback from Texas, I am kind of thinking they want to keep the system they have, and they don’t want to have to compete with the rest of the country. I think we might lose a vote or two to from Texas on that alone: We have ours; we don’t want America to have anything like that because then we have to compete with all of America.

This bill will allow courts to require periodic payments for future damages instead of lump sum awards. That helps limit bankruptcies so plaintiffs that might receive only pennies on the dollar can be prevented. And it includes provisions creating a “fair share” rule by which damages are allocated fairly in direct proportion to fault. That has got to help a lot when you are thinking about the cost of healthcare.

The bill does all this without in any way limiting compensation for 100 percent of the plaintiffs’ economic losses, which include anything to which a receipt can be attached, including all medical costs, lost wages, future lost wages, rehabilitation costs, or any other economic out-of-pocket loss suffered as a result of a healthcare injury.

Far from limiting deserved recoveries in California, these reforms have led to medical damage awards in deserving cases, Mr. Chairman, in the area of the \$80 million to \$90 million range.

The Washington Post reported a few months ago: “U.S. healthcare spending . . . is projected to accelerate over the next decade. . . . A study by the Centers for Medicare and Medicaid Services projects that the average growth in health spending will be even faster in 2016” on up through the decade of 2025. “The projections are based on an assumption that the legislative status quo will prevail.”

If we don’t change the law, we are going to see these costs going up.

As Nate Silver pointed out in The New York Times, not my favorite document: “All the major categories of Federal Government spending have been increasing relative to inflation. But essentially all of the increase in spending relative to economic growth and the potential tax base has come from entitlement programs, and about half of all of that has come from healthcare entitlements specifically.”

Studies show that as healthcare costs rise, wages fall; and the more companies pay in healthcare costs, the less

they can pay in wages. So when healthcare costs increase and that growth increases, wages stagnate; and when healthcare costs growth slows, wages go up.

Members who want to see wages increase should vote for this bill—it is good for the healthcare workers—because one of the drivers of higher healthcare spending is so-called defensive medicine.

The CHAIR. The time of the gentleman has expired.

Mr. KING of Iowa. Mr. Chairman, I yield myself an additional 2 minutes.

That is a very real phenomenon confirmed by countless studies in which healthcare workers conduct many additional costly tests and procedures with no medical value. That is charged to our Federal taxpayers, and it is simply to avoid excessive litigation costs.

A survey published in the Archives of Internal Medicine found that 91 percent of the over 1,000 doctors surveyed “reported believing that physicians order more tests and procedures than needed to protect themselves from malpractice suits.”

The study also asked: “Are protections against unwarranted medical malpractice lawsuits needed to decrease the unnecessary use of diagnostic tests?” And the answer, an identical number: 91 percent of the doctors surveyed agreed.

But there is one Newsweek reporter who described the personal experience of individual doctors this way: “Typical was one doctor, who had a list as long as my arm of procedures ER docs perform . . . for no patient benefit. They include following a bedside sonogram . . . with an “official” sonogram because it’s easier to defend yourself to a jury if you’ve ordered the second one; a CT scan for every child who bumped his or her head, to rule out things that can be diagnosed just fine by observation; X-rays that do not guide treatment, such as for a simple broken arm; CTs for suspected appendicitis that has been perfectly well diagnosed without it.

“Although doctors may hate practicing defensive medicine, they do it so they don’t get sued. . . . Nationwide, physicians estimate that 35 percent of diagnostic tests they ordered were to avoid lawsuits, as were 19 percent of hospitalizations, 14 percent of prescriptions, and 8 percent of surgeries. . . . All told,” according to the Newsweek article, \$650 billion in unnecessary care every year was provided by these doctors. Another ER doctor said he ordered 52 CT scans in one 12-hour shift for a total of \$104,000 in a single day.

These are the things we are dealing with, Mr. Chairman.

The CHAIR. The time of the gentleman has again expired.

Mr. KING of Iowa. Mr. Chairman, I yield myself an additional 1 minute.

One of the most recent studies, published a few months ago in the Journal of the American College of Radiology studied the effects of tort reform on

just radiographic tests alone and found that there were “2.4 million to 2.7 million fewer radiographic tests annually attributed to tort reforms.”

Just imagine what savings would occur if such reforms were attached to all Federal healthcare programs, as this bill would do.

□ 1445

It causes me to think of an orthopedic surgeon who told me that he can diagnose an ACL almost every time, yet he is compelled by his liability insurance to do additional tests, 97 percent of which are unnecessary.

That is the kind of thing we are dealing with, Mr. Chairman, and it is time for us to bring sanity to this litigation that we have in this country.

I reserve the balance of my time.

Mr. CONYERS. Mr. Chairman, I yield 30 seconds to the gentlewoman from Texas (Ms. JACKSON LEE).

Ms. JACKSON LEE. Mr. Chair, I thank the gentleman very much. I think the question to the gentleman from Michigan, and the gentleman's comments from Iowa, is the question of good medicine, and additional tests may, frankly, just be good medicine.

Maybe, Mr. Chair, Mr. CONYERS would agree that we should gather about insurance reform and capping premiums so that we can help our doctors. And I would assure you that they would be very happy on that.

But to the gentleman's point, I'm sorry to say he was incorrect, because we note that there are almost 20 States that have a variety of noncaps on certain aspects, and now the Federal intrusion will come in and now tell them where they do not have caps, that they have to have caps.

In fact, he is incorrect, and this bill does skew the medical service or medical treatment in our States.

Mr. CONYERS. Mr. Chair, I yield 2 minutes to the gentleman from Rhode Island (Mr. CICILLINE), a distinguished member of the House Judiciary Committee.

Mr. CICILLINE. Mr. Chair, I thank the gentleman for yielding.

I rise in strong opposition to H.R. 1215, which should be more accurately called the taking away access to care and justice act. This bill will do nothing to strengthen patient protections and will make careless healthcare providers less accountable.

It will severely limit when an injured person is allowed to bring a healthcare lawsuit by shortening the time that injured people have to seek relief. It will also impose a one-size-fits-all cap on how much compensation victims of medical malpractice can receive for pain and suffering, regardless of the severity of a person's injury—in order to benefit insurance companies and wrongdoers.

This cap even applies to intentional acts of misconduct. This bill would unfairly limit a patient suing a healthcare provider for sexual assault, as well as a veteran who has received

substandard medical care. The bill is written so broadly, it shields both negligent doctors and manufacturers of dangerous drugs and medical devices from liability.

H.R. 1215 is before us at a time when Republicans in the Senate are working hard to pass a bill that eliminates health coverage for 22 million people in order to give the wealthiest Americans and insurance companies a huge tax cut. The American people deserve better than this.

Our legal and healthcare system should work for the benefit of hard-working Americans, the people we represent, not for the powerful special interests. Republicans are chomping at the bit for the opportunity to eliminate health coverage for honest, hard-working Americans and are making deep cuts to Medicaid just so they can give the richest people in this country a \$600 billion tax cut.

And now, they want to prevent injured people from getting justice when they are hurt. Middle class families need to see that we are on their side. They don't need bills like H.R. 1215, which will rig the healthcare and justice systems against them.

I strongly urge my colleagues to vote “no” on H.R. 1215.

Mr. KING of Iowa. Mr. Chairman, I yield myself 1 minute.

Mr. Chairman, it is just interesting to me to hear this discussion about the Senate addressing the healthcare situation in America. I stood on this floor time, after time, after time, and in 2010, March 23 of 2010, the final passage of ObamaCare was sent out of the Congress to the President of the United States, who signed it immediately before the sun could come up in the morning.

And I was sick at heart at what happened to our Constitution, our rule of law, our individual rights. And now we have a mess of a healthcare system in America. This is a component of the fix. We don't have a single Democrat in the House or Senate that is willing to even commit to work with us to put up a single vote to try to improve the healthcare system in America.

They made a mistake, and they passed ObamaCare. They served it over to us and said: Now you fix it. Well, we are going to declare it a mess no matter what you do. We are going to fix it. It is going to take some time.

I reserve the balance of my time.

Mr. CONYERS. Mr. Chairman, I am pleased to yield 2 minutes to the gentleman from Florida (Mr. DEUTCH), a distinguished member of the Judiciary Committee.

Mr. DEUTCH. Mr. Chair, I thank my friend, the ranking member from Michigan.

Mr. Chairman, I am thrilled to hear my colleague talk about the Constitution. I am sorry that the Constitution that he is talking about doesn't include the right to a jury trial because that is the Constitution that I read.

And this piece of legislation, H.R. 1215, will threaten that constitutional

right. We have been told there is nothing to worry about in this bill because it will cover 100 percent of economic costs—anything that comes with a receipt, we were told.

I am going to tell you what is wrong with this bill and the stories of four people: a young child who goes in for a simple procedure and leaves the hospital paralyzed; a young adult who requires the amputation of his left leg, but the doctor amputates the right leg and he leaves the hospital with neither; the woman whose physician used his power to sexually assault her while she is sedated; and the rape of a nursing home patient by a trusted healthcare provider.

Mr. Chairman, there will be no receipts that will cover the costs that those four individuals would suffer for the rest of their lives that could be turned in, compensated, and subject to this artificial cap.

Why is it that my colleagues believe that they are in a better position to determine how those wronged individuals should be compensated for the atrocities that happened to them instead of allowing a jury of their peers do the same?

This bill is not meant to help reduce costs. This is an assault on injured people. This is an assault on those who value access to the courtroom in order to see justice.

I urge my colleagues, in the strongest possible terms, to reject this anticonsumer, this terrible piece of legislation.

Mr. KING of Iowa. Mr. Chairman, I yield myself 1 minute.

Mr. Chairman, as you listen to the stories that are here that have been delivered by the gentleman from Florida, I am wondering why we haven't heard these stories come out of California. Because this legislation essentially mirrors California legislation. That was the model that we followed. And they have had over 40 years to repeal or amend it, and it has been sustainable.

There is a right to a jury trial under this. It is just that there are caps that are set, that are reasonable caps, and the States are free to change those caps up or down.

So I don't quite follow this, but I would say someone who is raped in a nursing home is not covered under this. This legislation doesn't affect it at all. It has to have an affect by a diagnosis, a prevention, or a treatment of a disease impairment; and a rape is not that. So it would not be covered under this legislation.

Mr. Chairman, I know that my opposition would like to have this legislation killed. I would just point out something that I heard on the floor of the House here about 10 years ago, and it was this: We can pass this legislation, but the Senate may not pass it. And I would urge them to take it up. There is a special interest, and it is the Trial Lawyers Association. They are the ones who will not come out of this very well.

Mr. Chair, I reserve the balance of my time.

Mr. CONYERS. Mr. Chairman, I yield 1 minute to the gentleman from Tennessee (Mr. DUNCAN).

Mr. DUNCAN of Tennessee. Mr. Chairman, I rise in opposition to this bill. As the House Liberty Caucus wrote, this bill violates the 10th Amendment that conservatives have always supported.

More troubling is the way this bill is worded. It could lead to what the Liberty Caucus describes as a "massive expansion of Federal authority" because it could make almost every medical malpractice case a Federal case. Every case should not be a Federal case.

The States have already put pretty severe limits on medical malpractice cases. I have two other problems with this bill. I am in my 29th year in Congress. The doctors were asking for this \$250,000 limit then, too. \$250,000 29 years ago is certainly not \$250,000 today.

Finally, this bill, in the end, is saying there are really no limits on suits against 99.8 percent of the people I represent, but we are going to have special protection for this one very respected group of people. Conservatives have traditionally had more faith in people than in government.

I was a judge for 7.5 years before coming to Congress. Conservatives used to believe strongly in the jury system, and still should believe in that today.

Mr. KING of Iowa. Mr. Chairman, I yield myself 1 minute.

Mr. Chairman, I point out also that this bill keeps these cases in State court. It doesn't move them to Federal court. Previous legislation that has been brought to this floor, a decade or so ago, did move a lot of these cases to Federal court. But it is carefully drafted to keep this with the maximum amount of respect for States' rights that can be held and still have a Federal interest.

There has to be a Federal interest in every dollar involved in this. In every single case, there has to be Federal dollars involved in it, or this bill wouldn't affect it at all. And so I am one who is also a great respecter of States' rights. And in this legislation, as drafted, there are provisions in there over and over again that protect as many of the States' rights as can be. And if you take the other side of this argument, then it is far stronger that the right of the Federal Government would be usurped by the States if we don't have this legislation.

That is what is taking place now—States that choose not to make a decision, not to set caps, and we are seeing huge settlements going on around the country. This is what we want to end, so that we can save the \$50 to \$54 billion for the taxpayers. But the thing that is even worth more than this is, how much of that \$650 billion in defensive medicine will no longer be used in this country, and how much safer and less expensive will our healthcare be in America?

I reserve the balance of my time.

Mr. CONYERS. Mr. Chairman, I yield myself such time as I may consume.

I just have to add here that H.R. 1215 deeply intrudes on States' sovereignty. In particular, H.R. 1215 preempts State law governing joint and several liability, the availability of damages, the ability to introduce evidence of collateral source benefits, attorneys' fees, and periodic payments of future damages.

Members should not be fooled by assertions that the bill preserves State law. In fact, the rule of construction contained in the bill expressly states that it preempts State law, except in very limited circumstances where State law is more favorable to defendants.

Mr. Chair, I yield 2 minutes to the gentleman from Washington (Ms. JAYAPAL).

Ms. JAYAPAL. Mr. Chair, I thank the gentleman for yielding.

Mr. Chair, I rise today to express my strong opposition to H.R. 1215. First of all, my home State of Washington is one of those States where our Supreme Court has ruled and said that caps are not constitutional. So this bill is an intrusion of our States' rights.

This bill also clearly puts the interests of big corporations over everyday people and sends a signal to medical and health providers that they can act irresponsibly, perhaps to make more money, and get away with it.

Let me give you a very real example of what happens when hospitals put profit over people. The neurology program at Swedish Medical Center—Cherry Hill in Seattle is under investigation for negligent care arising out of a program designed to incentivize neuroscience doctors to take on heavy case-loads of complicated cases that lead to serious errors and even death.

One of the patients was Talia Goldenberg, a talented and vibrant young woman. Talia went in for a cervical spinal fusion with a neurosurgeon who had been embroiled in numerous investigations. And as a result of gross medical malpractice, Talia died.

According to a Seattle Times investigation, numerous problems surfaced around her care—or lack thereof—and attention to the surgery and medical complications that arose from it.

When Talia went in for her surgery, she was filled with hope. In thinking about the life that she might have after surgery, she wrote this: So who am I? I am an artist, a dreamer. I am a stationary biker. I am a woman, a girl, a person. I am a skier. I am an aspiring pole vaulter. I am a reluctant, yet faithful, believer of the power of lucky underwear. I am someone with a voice.

Talia died. She is one of the many tragic instances of people losing their lives to medical malpractice, and, even in my own office, two of my staffers have lost three of their grandparents due to medical malpractice. We have to make sure that we have consequences

when we entrust our healthcare to someone, and there are grave errors.

For the sake of Talia and so many others like her who have dreams that are violated by preventable errors, we must defeat this bill.

A "no" vote is a vote for the American people.

□ 1500

Mr. KING of Iowa. Mr. Chairman, I yield myself 1 minute.

Mr. Chairman, I was a little surprised to hear that a judge in the State of Washington had ruled that caps are unconstitutional. In fact, it is kind of curious to hear the same arguments—or conflicting arguments coming out of the other side. One of them says it is the States' rights to be able to set the caps. The other one says it is unconstitutional to set the caps. So I think that conflict, it would be good if that were resolved.

I think, in either case, that I disagree with both of those positions, Mr. Chairman.

If a Washington State judge says caps are unconstitutional, on what basis?

That would say, then, that a State legislature couldn't cap them; Congress can't cap them; that this is essentially, then, a function of the courts.

I remember a decision that came out of the State of Washington. It was a Federal judge that essentially ruled that the President's executive order on, let's say, migrants coming into the United States was unconstitutional, even though Congress specifically granted the authority to their President. So I am not going to defer to a single judge's opinion in that fashion.

I would point out, too, that we do protect States' rights. There is provision in this bill after provision, and it is titled State Flexibility. Look through their and find all the provisions of State Flexibility where we respect States' rights. And it is written as carefully as it can be to respect the maximum amount of States' rights.

Mr. Chairman, I reserve the balance of my time.

Mr. CONYERS. Mr. Chairman, I yield 2 minutes to the gentleman from New York (Mr. JEFFRIES).

Mr. JEFFRIES. Mr. Chairman, let's be clear: this bill has nothing to do with litigation reform. It has nothing to do with a good faith attempt to improve our healthcare system.

In fact, this bill was described as phase 3 of an effort to improve our healthcare by the majority leader on the other side of the aisle. I put out a search committee. I still can't find phase 1 or phase 2. It has nothing to do with reforming our healthcare system.

This bill is an unprecedented attack on States' rights. It is a wolf in sheep's clothing. It is a solution in search of a problem. It is nothing more than a reckless legislative joyride guaranteed to crash and burn on the American people.

This bill, if enacted, will hurt working families, middle class people, senior citizens, the poor, the sick, the afflicted, veterans, and nursing home residents.

The American people deserve a litigation system that works for everyone, not simply the wealthy and the well-off. The American people deserve a litigation system that puts the public's interest ahead of special interests. The American people deserve a litigation system that promotes public health, not just excessive wealth.

This bill fails on all of those counts. It is mean-spirited, it is cruel, it is heartless. Mr. Chairman, that is why it must be defeated.

Mr. KING of Iowa. Mr. Chairman, I yield myself 15 seconds.

I would just point out to the body that I didn't hear a single fact in the previous 2 minutes. It is all opinion and hurled accusations. But I think it is important for this body to deliberate over the facts themselves, and I have delivered a lot of that data.

Mr. Chairman, I reserve the balance of my time.

Mr. CONYERS. Mr. Chairman, I yield 2 minutes to the gentleman from Maryland (Mr. RASKIN), a distinguished member of the House Judiciary Committee.

Mr. RASKIN. Mr. Chairman, the floor leader has invited us to stick to the facts, so I want to stick to the facts in order to clear up some of the propaganda I have heard today for this terrible bill.

First of all, it has nothing to do with "groundless cases or frivolous claims," because the draconian new limits proposed in their legislation applied only to valid claims in serious cases. It has nothing to do with groundless cases and frivolous claims. That is an irrelevant distraction from their own legislation, which is an attempt to reduce what you can recover with a perfectly valid claim when a jury has awarded you damages.

Number two, the floor leader says that it would not apply in the case of someone being raped in a nursing home. Perhaps he thinks it wouldn't apply to my constituent, a 15-year-old girl who got raped by her dentist.

But as I read the bill, it says, "healthcare lawsuit means any action against a healthcare provider," and that includes anyone who is providing healthcare. So if a nursing home is providing healthcare or a dentist is providing healthcare, they would be covered by the law.

But I would invite the floor leader to clear this up, because if he is representing now that rapes of patients in a nursing home or in a dentist's office don't count, that should be definitive legislative history that we establish today because we tried to amend the bill to that effect in committee and the majority voted it down. But he has just represented that a rape would not count, and I want him to definitively commit whether or not a rape by a healthcare provider would count.

Finally, the gentleman from Iowa says it won't preempt the States, it will not impose Federal laws because it is still in the State courts. It is still in the State courts, but Federal law now applies.

There are 28 States which have said that you cannot limit people's access to noneconomic damages when a jury wants to award them those damages for pain and suffering. They have either said in their Constitution there can be no limits at all, or the legislatures have said it, or the State supreme courts have struck it down. And their legislation is a bulldozer that will run over the laws of 28 States.

And they claim, Mr. Chairman, that somehow they are acting in the guise of federalism. They are destroying federalism. That is why I was so happy that Mr. DUNCAN, a former State Judge from Tennessee, and a member of the GOP majority, got up to say this is antithetical to everything they stand for.

Mr. KING of Iowa. Mr. Chairman, I yield myself 1 minute.

Mr. Chairman, I would point out, first of all, the gentleman from Maryland must know that this isn't a criminal statute. This is civil law. It doesn't have anything to do with crime or criminal law, so let's keep our discussion to the civil actions that we are discussing here.

It is not propaganda. It is facts that we have delivered on this side. So I want to put this into the RECORD verbatim, Mr. Chairman. Regarding cases of rape or physical abuse, H.R. 1215 does not cover such cases at all. That is because the bill only applies to medical malpractice claims based on the provision or use of healthcare services; and healthcare services are defined in the bill as things related to the diagnosis, prevention, or treatment of any human disease or impairment.

Clearly, rape or any other physical abuse, and the neglect of basic sanitary conditions, is not related to the diagnosis, prevention, or treatment of any human disease or impairment. So in cases involving rape or physical abuse by anyone, or neglect of basic needs, the bill simply does not apply.

But it does respect States' rights. It is carefully written to protect States' rights. It is a significant and huge improvement upon some efforts we have seen in the past, and one of those reasons is because many of us care about States' rights, and we pay attention to the Constitution. There is a Federal nexus in everything that goes on here, and States are not limited from raising caps on economic or noneconomic damages or lowering those caps. We respect the States in every way possible, and still get a positive result out of H.R. 1215.

Mr. Chairman, I reserve the balance of my time.

Mr. CONYERS. Mr. Chairman, I yield 30 seconds to the gentleman from Maryland (Mr. RASKIN).

Mr. RASKIN. Mr. Chairman, first of all, there are only three States in the

Union that set the limit where they want Congress to set it for every State, which is \$250,000. They are overriding the laws of 28 States which allow for unlimited damages.

Number two, the gentleman from Iowa says: Well, a rape is criminal, so it is not related.

But you can bring civil actions against the same conduct that constitutes a crime. So if you look at your own bill, it says any theory of liability, so that would include intentional acts.

Now, again, Mr. Chairman, is the majority representing that this will not apply to intentional torts?

Because they were very definitive in committee that it would apply to intentional torts, including rapes and assaults. So I would like to know: Does it apply or does it not?

Because this is a critical matter, because people have been—we are not talking about the good doctors. Everybody loves the good doctors. We are talking about doctors or nursing home providers or dentists who rape their patients and assault their patients.

They would be limited—juries could try to give millions of dollars, but their legislation would limit you to \$250,000 in noneconomic damages. We have got to clear this up, Mr. Chairman.

Mr. KING of Iowa. Mr. Chairman, I reserve the balance of my time.

Mr. CONYERS. Mr. Chairman, I yield 1 minute to the gentlewoman from Oregon (Ms. BONAMICI).

Ms. BONAMICI. Mr. Chairman, I rise today in strong opposition to H.R. 1215, a misguided and misnamed bill that will limit access to justice, especially for women.

The bill caps the amount of compensation a jury can award to a victim who suffers medical injuries, even catastrophic injuries, because it creates a lifetime cap of \$250,000 for noneconomic damages.

This means that women, or men, for that matter, who are at home raising their families, or children who are victims of devastating medical malpractice are told that the value of their injuries and their lives is less than that of their wage-earning counterparts. That is patently unfair. It disproportionately penalizes people who are family caregivers—a very important job, but one that does not involve wages.

Furthermore, many women across the country have been victims of medical malpractice that has left them unable to bear children.

How can we say to these women that the loss they have suffered, the loss of an opportunity to be a mother is without value?

That is unacceptable, and it is cruel.

Many medical errors are preventable. We should be focusing on improving patient safety, not taking away rights from victims.

I oppose this bill, and I will continue to fight back against attempts to limit access to justice for those who need it most. Please join me in voting "no."

Mr. KING of Iowa. Mr. Chairman, I yield myself 30 seconds.

Mr. Chairman, I have heard the gentleman from Maryland say that this legislation would override the laws of 28 States. That was a surprise to me to hear that when I heard the number before Rules Committee, which I think I actually recall it was 27. But 28, 27, it doesn't override laws. It is the absence of laws.

There are States that don't have caps. That is what we are talking about here. So it is not overriding State laws in States where there are no laws. It simply is setting a Federal foundation and a guideline for them.

And if I am in a State legislature, I know I have the authority to raise or lower the cap on economic and on non-economic damages, and that my laws are not being overridden, but they are being provided by the wisdom of the American people, then I am going to be thankful I have that to work with until I can amend it.

Mr. Chairman, I reserve the balance of my time.

Mr. CONYERS. Mr. Chairman, I refer my colleague, the floor leader on the other side to section 9 of the bill. We have just looked at it.

Mr. Chairman, I yield 1 minute to the gentleman from California (Ms. BARRAGÁN).

Ms. BARRAGÁN. Mr. Chairman, I rise today in opposition to H.R. 1215 and to express my extreme concerns with this bill.

I am from California, and I am an attorney, and I can tell you that this bill goes beyond medical malpractice. It goes way beyond that. It includes cases involving unsafe drugs and nursing home abuse and neglect. That is not happening in California.

If passed, it would prevent cases where seniors have endured tragic deaths and injuries, like an 88-year-old California woman who was sexually assaulted by her nursing assistant after she suffered a stroke, resulting in lifelong mental and physical pain.

Over 80 senior and healthcare groups, including the American Association for Justice and the California Advocates for Nursing Home Reform, have come out against this bill. They recognize that we need to protect our vulnerable seniors.

Mr. Chairman, I urge my colleagues to oppose this bill.

Mr. KING of Iowa. Mr. Chairman, I reserve the balance of my time.

Mr. CONYERS. Mr. Chairman, I yield 1 minute to the gentleman from Pennsylvania (Mr. CARTWRIGHT).

Mr. CARTWRIGHT. Mr. Chairman, here we are dealing with some amount of irony with H.R. 1215. The year 1215 was the year the Magna Carta was signed, something that created the seeds of the American right to jury trial, for Heaven's sake.

You know, we were pleased to hear Representative DUNCAN from Tennessee say: "Conservatives believe strongly in the jury system." And I do, too, and

Americans do, too. Our Founding Fathers believed in it.

Here in America, where we trust juries to decide life and death for criminal defendants, why wouldn't we trust them to set a proper and fair dollar amount on a malpractice case?

By definition, these are meritorious cases, cases where there was actual negligence, actual recklessness, actual intentional harm by healthcare providers or nursing homes.

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But maybe most importantly, none of us, nary a soul in this House would deny that standing up for veterans and our military families is a core value for all of us. This is a bill that prevents accountability for harm done to military and veterans of the VA system.

Mr. KING of Iowa. Mr. Chairman, I reserve the balance of my time.

Mr. CONYERS. Mr. Chairman, I yield 1 minute to the gentleman from Maryland (Mr. RASKIN).

Mr. RASKIN. Mr. Chairman, I thank Mr. CONYERS very much for yielding.

The good gentleman from Iowa invites us to believe that the laws of the States are not being overridden because some of these States don't have laws. That's right, because their State supreme courts have said that their constitutions forbid the imposition of a cap on what juries would award people who are injured in medical cases.

So, in Arizona, Arkansas, Kentucky, Pennsylvania, and Wyoming, there are State constitutional prohibitions explicitly on damage caps. In New York and Oklahoma, there are explicit caps on damages in wrongful death cases. And in 11 States, State supreme courts have struck down statutorily enacted medical malpractice damage caps: Alabama, Florida, Georgia, Illinois, Missouri, New Hampshire, North Dakota, South Dakota, Utah, Washington, and Wisconsin.

Now, what is interesting in my State, the 15-year-old girl who was raped by her dentist could recover up to \$785,000 because we had a whole special session of our general assembly to arrive at that figure. But there are other States where they said you can't have any limits at all, and those are the States that are being attacked by this legislation because now they are reducing them from potentially \$20 million or \$10 million to \$200,000, an outrageous invasion in states' rights and the rights of juries to decide how people need to be compensated.

Mr. CONYERS. Mr. Chairman, I yield myself the balance of my time to close.

Numerous consumer, labor, veterans, and legal groups all oppose H.R. 1215, including the AFL-CIO, the American College of Physicians, the Consumers Union, Public Citizen, Vietnam Veterans of America, 12 other national veterans organizations, and the Liberty Caucus.

H.R. 1215 is an extremely flawed bill that will deny access to justice for victims of medical malpractice and espe-

cially those who are the most vulnerable among us. It would deny full compensation for injuries suffered by veterans and military families, children, the elderly, and the poor.

I hope my colleagues will join us in opposing this very unnecessary, mean-spirited bill.

Mr. Chairman, I yield back the balance of my time.

Mr. KING of Iowa. Mr. Chairman, I inquire as to the amount of time I have remaining.

The CHAIR. The gentleman from Iowa has 4½ minutes remaining.

Mr. KING of Iowa. Mr. Chair, I yield myself the balance of my time.

First, I say in response to the gentleman from Maryland's discussion about the States courts that have prohibited caps. That is one of the reasons that we need this legislation, is that you have out-of-control liberal judges that have decided that even their State legislatures can't pass the laws. They want to come in and preempt the states' rights of we, the people, of the individual States who elect their general assemblies to make their decisions.

Often, the judges are set in lifetime appointments where they are not held accountable, so it would be interesting to look back into each of these States that the gentleman from Maryland has mentioned and address this thing from "we, the people" because we, the people, are the power in this country. Our rights come from God, and they are vested in we, the people.

I thought the gentleman from Pennsylvania's look at H.R. 1215 was a really deft way to focus on this and speak about the Magna Carta, but there wasn't anybody back in old England in that time that had any shot at filing a liability claim, let alone receiving a frivolous claim that would make one individual vastly wealthy at the expense of a lot of other folks. So this is something that has accumulated over the last 502 years since the Magna Carta was signed.

So I would say this: healthcare costs are out of control due in large part to unlimited lawsuits and other problems ObamaCare failed to solve or else ObamaCare made worse. H.R. 1215 is commonsense litigation reform legislation that will rein in overly aggressive and healthcare lawsuits while preserving the ability of plaintiffs to recover unlimited economic damages.

The bill applies only to claims concerning the provision of healthcare goods or services for which coverage is provided in whole or in part by a Federal program, a Federal subsidy, or a Federal tax benefit giving it a clear Federal nexus.

This isn't criminal legislation. It doesn't address the cases of rape. We should arrest those people and lock them up in prison and punish them to the max, but it is not the subject of this legislation.

So wherever the Federal policy directly affects the distribution of

healthcare, there is a clear Federal interest in reducing the cost of such Federal policy. This bill's commonsense reforms, which have been the law in California for over 40 years, are conservatively estimated by CBO to save at least \$50 billion. The previous estimate was \$54 billion in Federal healthcare dollars. At the same time, this bill doesn't in any way limit compensation for 100 percent of plaintiffs' losses.

As reported in The Washington Post last month, the U.S. healthcare spending is projected to accelerate over the next day. A study by the Centers for Medicare and Medicaid Services project that the average growth in healthcare spending will be even faster between 2016 and 2025. The projections are based on an assumption that the legislative status quo will prevail. Studies show that, as healthcare costs rise, wages fall. H.R. 1215 will save billions of dollars in healthcare costs and will, thereby, increase wages for workers nationwide.

Mr. Chairman, as I look at the picture of how I watched this defensive medicine grow over the years and over the decades, \$650 billion potentially, reported by a Newsweek article, in unnecessary defensive medicine tests that are done. A doctor that ordered CT scans in massive numbers in a single day, when I see 97 percent of the MRIs just to be sure that the diagnosis of an ACL knee injury is protected in the case of liability insurance, we are not going to see just \$50 billion in savings here. We are going to see hundreds of billions of dollars in savings.

And as an anesthesiologist told me that—he was practicing in Texas—when Texas passed the law that is roughly a mirror of California law, that his premium as an anesthesiologist was \$26,000 a year; and after the law passed in Texas, it dropped to \$6,500, exactly one-fourth. A 75 percent reduction in that particular case. He is now practicing in Iowa. Iowa passed mirror legislation as well.

Mr. Chairman, I urge all of my colleagues to join me in supporting this vital legislation, and I yield back the balance of my time.

The CHAIR. All time for general debate has expired.

Pursuant to the rule, the bill shall be considered for amendment under the 5-minute rule.

In lieu of the amendment in the nature of a substitute recommended by the Committee on the Judiciary, printed in the bill, it shall be in order to consider as an original bill for the purpose of amendment under the 5-minute rule an amendment in the nature of a substitute consisting of the text of Rules Committee Print 115-10. That amendment in the nature of a substitute shall be considered as read.

The text of the amendment in the nature of a substitute is as follows:

H.R. 1215

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the "Protecting Access to Care Act of 2017".

(b) TABLE OF CONTENTS.—The table of contents of this Act is as follows:

- Sec. 1. Short title; table of contents.
- Sec. 2. Encouraging speedy resolution of claims.
- Sec. 3. Compensating patient injury.
- Sec. 4. Maximizing patient recovery.
- Sec. 5. Authorization of payment of future damages to claimants in health care lawsuits.
- Sec. 6. Product liability for health care providers.
- Sec. 7. Definitions.
- Sec. 8. Effect on other laws.
- Sec. 9. Rules of construction.
- Sec. 10. Effective date.

SEC. 2. ENCOURAGING SPEEDY RESOLUTION OF CLAIMS.

(a) STATUTE OF LIMITATIONS.—The time for the commencement of a health care lawsuit shall be 3 years after the date of injury or 1 year after the claimant discovers, or through the use of reasonable diligence should have discovered, the injury, whichever occurs first. In no event shall the time for commencement of a health care lawsuit exceed 3 years after the date of injury unless tolled for any of the following—

- (1) upon proof of fraud;
 - (2) intentional concealment; or
 - (3) the presence of a foreign body, which has no therapeutic or diagnostic purpose or effect, in the person of the injured person.
- Actions by a minor shall be commenced within 3 years from the date of the injury except that actions by a minor under the full age of 6 years shall be commenced within 3 years of injury, or 1 year after the injury is discovered, or through the use of reasonable diligence should have been discovered, or prior to the minor's 8th birthday, whichever provides a longer period. Such time limitation shall be tolled for minors for any period during which a parent or guardian and a health care provider have committed fraud or collusion in the failure to bring an action on behalf of the injured minor.

(b) STATE FLEXIBILITY.—No provision of subsection (a) shall be construed to preempt any state law (whether effective before, on, or after the date of the enactment of this Act) that—

- (1) specifies a time period of less than 3 years after the date of injury or less than 1 year after the claimant discovers, or through the use of reasonable diligence should have discovered, the injury, for the filing of a health care lawsuit;
- (2) that specifies a different time period for the filing of lawsuits by a minor;
- (3) that triggers the time period based on the date of the alleged negligence; or
- (4) establishes a statute of repose for the filing of health care lawsuit.

SEC. 3. COMPENSATING PATIENT INJURY.

(a) UNLIMITED AMOUNT OF DAMAGES FOR ACTUAL ECONOMIC LOSSES IN HEALTH CARE LAWSUITS.—In any health care lawsuit, nothing in this Act shall limit a claimant's recovery of the full amount of the available economic damages, notwithstanding the limitation in subsection (b).

(b) ADDITIONAL NONECONOMIC DAMAGES.—In any health care lawsuit, the amount of noneconomic damages, if available, shall not exceed \$250,000, regardless of the number of parties against whom the action is brought or the number of separate claims or actions brought with respect to the same injury.

(c) NO DISCOUNT OF AWARD FOR NONECONOMIC DAMAGES.—For purposes of applying the limitation in subsection (b), future noneconomic damages shall not be discounted to present value. The jury shall not

be informed about the maximum award for noneconomic damages. An award for noneconomic damages in excess of \$250,000 shall be reduced either before the entry of judgment, or by amendment of the judgment after entry of judgment, and such reduction shall be made before accounting for any other reduction in damages required by law. If separate awards are rendered for past and future noneconomic damages and the combined awards exceed \$250,000, the future noneconomic damages shall be reduced first.

(d) FAIR SHARE RULE.—In any health care lawsuit, each party shall be liable for that party's several share of any damages only and not for the share of any other person. Each party shall be liable only for the amount of damages allocated to such party in direct proportion to such party's percentage of responsibility. Whenever a judgment of liability is rendered as to any party, a separate judgment shall be rendered against each such party for the amount allocated to such party. For purposes of this section, the trier of fact shall determine the proportion of responsibility of each party for the claimant's harm.

(e) STATE FLEXIBILITY.—No provision of this section shall be construed to preempt any State law (whether effective before, on, or after the date of the enactment of this Act) that specifies a particular monetary amount of economic or noneconomic damages (or the total amount of damages) that may be awarded in a health care lawsuit, regardless of whether such monetary amount is greater or lesser than is provided for under this section.

SEC. 4. MAXIMIZING PATIENT RECOVERY.

(a) COURT SUPERVISION OF SHARE OF DAMAGES ACTUALLY PAID TO CLAIMANTS.—In any health care lawsuit, the court shall supervise the arrangements for payment of damages to protect against conflicts of interest that may have the effect of reducing the amount of damages awarded that are actually paid to claimants. In particular, in any health care lawsuit in which the attorney for a party claims a financial stake in the outcome by virtue of a contingent fee, the court shall have the power to restrict the payment of a claimant's damage recovery to such attorney, and to redirect such damages to the claimant based upon the interests of justice and principles of equity. In no event shall the total of all contingent fees for representing all claimants in a health care lawsuit exceed the following limits:

- (1) Forty percent of the first \$50,000 recovered by the claimant(s).
- (2) Thirty-three and one-third percent of the next \$50,000 recovered by the claimant(s).
- (3) Twenty-five percent of the next \$500,000 recovered by the claimant(s).
- (4) Fifteen percent of any amount by which the recovery by the claimant(s) is in excess of \$600,000.

(b) APPLICABILITY.—The limitations in this section shall apply whether the recovery is by judgment, settlement, mediation, arbitration, or any other form of alternative dispute resolution. In a health care lawsuit involving a minor or incompetent person, a court retains the authority to authorize or approve a fee that is less than the maximum permitted under this section. The requirement for court supervision in the first two sentences of subsection (a) applies only in civil actions.

(c) STATE FLEXIBILITY.—No provision of this section shall be construed to preempt any State law (whether effective before, on, or after the date of the enactment of this Act) that specifies a lesser percentage or lesser total value of damages which may be claimed by an attorney representing a claimant in a health care lawsuit.

SEC. 5. AUTHORIZATION OF PAYMENT OF FUTURE DAMAGES TO CLAIMANTS IN HEALTH CARE LAWSUITS.

(a) **IN GENERAL.**—In any health care lawsuit, if an award of future damages, without reduction to present value, equaling or exceeding \$50,000 is made against a party with sufficient insurance or other assets to fund a periodic payment of such a judgment, the court shall, at the request of any party, enter a judgment ordering that the future damages be paid by periodic payments, in accordance with the Uniform Periodic Payment of Judgments Act promulgated by the National Conference of Commissioners on Uniform State Laws.

(b) **APPLICABILITY.**—This section applies to all actions which have not been first set for trial or retrial before the effective date of this Act.

(c) **STATE FLEXIBILITY.**—No provision of this section shall be construed to preempt any State law (whether effective before, on, or after the date of the enactment of this Act) that specifies periodic payments for future damages at any amount other than \$50,000 or that mandates such payments absent the request of either party.

SEC. 6. PRODUCT LIABILITY FOR HEALTH CARE PROVIDERS.

A health care provider who prescribes, or who dispenses pursuant to a prescription, a medical product approved, licensed, or cleared by the Food and Drug Administration shall not be named as a party to a product liability lawsuit involving such product and shall not be liable to a claimant in a class action lawsuit against the manufacturer, distributor, or seller of such product.

SEC. 7. DEFINITIONS.

In this Act:

(1) **ALTERNATIVE DISPUTE RESOLUTION SYSTEM; ADR.**—The term “alternative dispute resolution system” or “ADR” means a system that provides for the resolution of health care lawsuits in a manner other than through a civil action brought in a State or Federal court.

(2) **CLAIMANT.**—The term “claimant” means any person who brings a health care lawsuit, including a person who asserts or claims a right to legal or equitable contribution, indemnity, or subrogation, arising out of a health care liability claim or action, and any person on whose behalf such a claim is asserted or such an action is brought, whether deceased, incompetent, or a minor.

(3) **COLLATERAL SOURCE BENEFITS.**—The term “collateral source benefits” means any amount paid or reasonably likely to be paid in the future to or on behalf of the claimant, or any service, product, or other benefit provided or reasonably likely to be provided in the future to or on behalf of the claimant, as a result of the injury or wrongful death, pursuant to—

(A) any State or Federal health, sickness, income-disability, accident, or workers’ compensation law;

(B) any health, sickness, income-disability, or accident insurance that provides health benefits or income-disability coverage;

(C) any contract or agreement of any group, organization, partnership, or corporation to provide, pay for, or reimburse the cost of medical, hospital, dental, or income-disability benefits; and

(D) any other publicly or privately funded program.

(4) **CONTINGENT FEE.**—The term “contingent fee” includes all compensation to any person or persons which is payable only if a recovery is effected on behalf of one or more claimants.

(5) **ECONOMIC DAMAGES.**—The term “economic damages” means objectively verifiable monetary losses incurred as a result of the provision or use of (or failure to

provide or use) health care services or medical products, such as past and future medical expenses, loss of past and future earnings, cost of obtaining domestic services, loss of employment, and loss of business or employment opportunities, unless otherwise defined under applicable state law. In no circumstances shall damages for health care services or medical products exceed the amount actually paid or incurred by or on behalf of the claimant.

(6) **FUTURE DAMAGES.**—The term “future damages” means any damages that are incurred after the date of judgment, settlement, or other resolution (including mediation, or any other form of alternative dispute resolution).

(7) **HEALTH CARE LAWSUIT.**—The term “health care lawsuit” means any health care liability claim concerning the provision of goods or services for which coverage was provided in whole or in part via a Federal program, subsidy or tax benefit, or any health care liability action concerning the provision of goods or services for which coverage was provided in whole or in part via a Federal program, subsidy or tax benefit, brought in a State or Federal court or pursuant to an alternative dispute resolution system, against a health care provider regardless of the theory of liability on which the claim is based, or the number of claimants, plaintiffs, defendants, or other parties, or the number of claims or causes of action, in which the claimant alleges a health care liability claim. Such term does not include a claim or action which is based on criminal liability; which seeks civil fines or penalties paid to Federal, State, or local government; or which is grounded in antitrust.

(8) **HEALTH CARE LIABILITY ACTION.**—The term “health care liability action” means a civil action brought in a State or Federal court or pursuant to an alternative dispute resolution system, against a health care provider regardless of the theory of liability on which the claim is based, or the number of plaintiffs, defendants, or other parties, or the number of causes of action, in which the claimant alleges a health care liability claim.

(9) **HEALTH CARE LIABILITY CLAIM.**—The term “health care liability claim” means a demand by any person, whether or not pursuant to ADR, against a health care provider, including, but not limited to, third-party claims, cross-claims, counter-claims, or contribution claims, which are based upon the provision or use of (or the failure to provide or use) health care services or medical products, regardless of the theory of liability on which the claim is based, or the number of plaintiffs, defendants, or other parties, or the number of causes of action.

(10) **HEALTH CARE PROVIDER.**—The term “health care provider” means any person or entity required by State or Federal laws or regulations to be licensed, registered, or certified to provide health care services, and being either so licensed, registered, or certified, or exempted from such requirement by other statute or regulation, as well as any other individual or entity defined as a health care provider, health care professional, or health care institution under state law.

(11) **HEALTH CARE SERVICES.**—The term “health care services” means the provision of any goods or services by a health care provider, or by any individual working under the supervision of a health care provider, that relates to the diagnosis, prevention, or treatment of any human disease or impairment, or the assessment or care of the health of human beings.

(12) **MEDICAL PRODUCT.**—The term “medical product” means a drug, device, or biological product intended for humans, and the terms “drug”, “device”, and “biological product”

have the meanings given such terms in sections 201(g)(1) and 201(h) of the Federal Food, Drug and Cosmetic Act (21 U.S.C. 321(g)(1) and (h)) and section 351(a) of the Public Health Service Act (42 U.S.C. 262(a)), respectively, including any component or raw material used therein, but excluding health care services.

(13) **NONECONOMIC DAMAGES.**—The term “noneconomic damages” means damages for physical and emotional pain, suffering, inconvenience, physical impairment, mental anguish, disfigurement, loss of enjoyment of life, loss of society and companionship, loss of consortium (other than loss of domestic service), hedonic damages, injury to reputation, and all other nonpecuniary losses of any kind or nature incurred as a result of the provision or use of (or failure to provide or use) health care services or medical products, unless otherwise defined under applicable state law.

(14) **RECOVERY.**—The term “recovery” means the net sum recovered after deducting any disbursements or costs incurred in connection with prosecution or settlement of the claim, including all costs paid or advanced by any person. Costs of health care incurred by the plaintiff and the attorneys’ office overhead costs or charges for legal services are not deductible disbursements or costs for such purpose.

(15) **REPRESENTATIVE.**—The term “representative” means a legal guardian, attorney, person designated to make decisions on behalf of a patient under a medical power of attorney, or any person recognized in law or custom as a patient’s agent.

(16) **STATE.**—The term “State” means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Northern Mariana Islands, the Trust Territory of the Pacific Islands, and any other territory or possession of the United States, or any political subdivision thereof.

SEC. 8. EFFECT ON OTHER LAWS.

(a) **VACCINE INJURY.**—

(1) To the extent that title XXI of the Public Health Service Act establishes a Federal rule of law applicable to a civil action brought for a vaccine-related injury or death—

(A) this Act does not affect the application of the rule of law to such an action; and

(B) any rule of law prescribed by this Act in conflict with a rule of law of such title XXI shall not apply to such action.

(2) If there is an aspect of a civil action brought for a vaccine-related injury or death to which a Federal rule of law under title XXI of the Public Health Service Act does not apply, then this Act or otherwise applicable law (as determined under this Act) will apply to such aspect of such action.

(b) **OTHER FEDERAL LAW.**—Except as provided in this section, nothing in this Act shall be deemed to affect any defense available to a defendant in a health care lawsuit or action under any other provision of Federal law.

SEC. 9. RULES OF CONSTRUCTION.

(a) **HEALTH CARE LAWSUITS.**—Unless otherwise specified in this Act, the provisions governing health care lawsuits set forth in this Act preempt, subject to subsections (b) and (c), State law to the extent that State law prevents the application of any provisions of law established by or under this Act. The provisions governing health care lawsuits set forth in this Act supersede chapter 171 of title 28, United States Code, to the extent that such chapter—

(1) provides for a greater amount of damages or contingent fees, a longer period in which a health care lawsuit may be commenced, or a reduced applicability or scope

of periodic payment of future damages, than provided in this Act; or

(2) prohibits the introduction of evidence regarding collateral source benefits, or mandates or permits subrogation or a lien on collateral source benefits.

(b) **PROTECTION OF STATES' RIGHTS AND OTHER LAWS.**—Any issue that is not governed by any provision of law established by or under this Act (including State standards of negligence) shall be governed by otherwise applicable State or Federal law

(c) **STATE FLEXIBILITY.**—No provision of this Act shall be construed to preempt any defense available to a party in a health care lawsuit under any other provision of State or Federal law.

SEC. 10. EFFECTIVE DATE.

This Act shall apply to any health care lawsuit brought in a Federal or State court, or subject to an alternative dispute resolution system, that is initiated on or after the date of the enactment of this Act, except that any health care lawsuit arising from an injury occurring prior to the date of the enactment of this Act shall be governed by the applicable statute of limitations provisions in effect at the time the cause of action accrued.

The CHAIR. No amendment to that amendment in the nature of a substitute shall be in order except those printed in House Report 115-179. Each such amendment may be offered only in the order printed in the report, by a Member designated in the report, shall be considered as read, shall be debatable for the time specified in the report equally divided and controlled by the proponent and an opponent, shall not be subject to amendment, and shall not be subject to a demand for division of the question.

AMENDMENT NO. 1 OFFERED BY MR. SESSIONS

The CHAIR. It is now in order to consider amendment No. 1 printed in House Report 115-179.

Mr. SESSIONS. Mr. Chairman, I have an amendment at the desk.

The CHAIR. The Clerk will designate the amendment.

The text of the amendment is as follows:

Page 1, strike line 7 and all that follows through page 2, line 18 and insert the following:

(a) STATUTE OF LIMITATIONS.—

(1) **IN GENERAL.**—Except as provided in paragraph (2), the time for the commencement of a health care lawsuit shall be, whichever occurs first of the following:

(A) 3 years after the date of the occurrence of the breach or tort;

(B) 3 years after the date the medical or health care treatment that is the subject of the claim is completed; or

(C) 1 year after the claimant discovers, or through the use of reasonable diligence should have discovered, the injury.

(2) **TOLLING.**—In no event shall the time for commencement of a health care lawsuit exceed 3 years after the date of the occurrence of the breach or tort or 3 years after the date the medical or health care treatment that is the subject of the claim is completed (whichever occurs first) unless tolled for any of the following—

(A) upon proof of fraud;

(B) intentional concealment; or

(C) the presence of a foreign body, which has no therapeutic or diagnostic purpose or effect, in the person of the injured person.

(3) **ACTIONS BY A MINOR.**—Actions by a minor shall be commenced within 3 years

after the date of the occurrence of the breach or tort or 3 years after the date of the medical or health care treatment that is the subject of the claim is completed (whichever occurs first) except that actions by a minor under the full age of 6 years shall be commenced within 3 years after the date of the occurrence of the breach or tort, 3 years after the date of the medical or health care treatment that is the subject of the claim is completed, or 1 year after the injury is discovered, or through the use of reasonable diligence should have been discovered, or prior to the minor's 8th birthday, whichever provides a longer period. Such time limitation shall be tolled for minors for any period during which a parent or guardian and a health care provider have committed fraud or collusion in the failure to bring an action on behalf of the injured minor.

The CHAIR. Pursuant to House Resolution 382, the gentleman from Texas (Mr. Sessions) and a Member opposed each will control 5 minutes.

The Chair recognizes the gentleman from Texas.

Mr. SESSIONS. Mr. Chairman, I am pleased to offer this amendment with Dr. MICHAEL BURGESS, also a member of the House Rules Committee, and also a gentleman from my home State of Texas.

The goal of our amendment is to strengthen the underlying legislation by clarifying the point at which the statute of limitations begins to run.

In Texas, the statute of limitations begins to run from the date the alleged negligence occurs or date of last treatment. This is a certain date that does not leave room for controversy. I believe aligning the underlying text with this approach will benefit both physicians and patients to clarify exactly where harm might occur.

My amendment clarifies that when the date of the breach or tort is known, the statute runs from that date. When the date of the breach or tort is not known, the statute runs from the last date of treatment. By this method, certainty is provided to defendant, plaintiff, and the court. Easy understanding. For example, if there is a surgical mishap, the statute would run from that date. On the other hand, if the injury is from the prescription medication over a long period of time, it would run from the date of last treatment.

I am pleased that the Texas Medical Association, the Texas Alliance for Patient Access, the Health Coalition of Liability and Access, as well as the National Physicians' Council for Healthcare Policy support this process and this amendment. I hope my colleagues on both sides of the aisle will support this commonsense, reasonable reform that comes to us today in an amendment.

I thank Chairman BOB GOODLATTE from Virginia and his awesome staff for their work to make sure this amendment and the underlying legislation conform with their ideas consistent with the legislation.

Mr. Chairman, I reserve the balance of my time.

Mr. COHEN. Mr. Chairman, I rise in opposition to the amendment.

The CHAIR. The gentleman from Tennessee is recognized for 5 minutes.

Mr. COHEN. Mr. Chairman, the amendment does even more damage than the bill does because it makes it possible that there will be even less time for a plaintiff, once they are aware of their injury, to bring action.

This is something that lessens the statute of limitations. That is what the bill is trying to do, is to see that less people get their opportunity to get to court, which is what statute of limitations are intended to do. That is the purpose.

When somebody has been injured from a medical malpractice case or negligence from a nursing home, we should encourage people to get relief and let a jury decide.

These bills—and I suspect these amendments because they are aimed at the same thing—are opposed by the AFL-CIO; the American Federation of State, County, and Municipal Employees; the American Bar Association—not exactly a liberal lion—the Center for Justice and Democracy; and the National Conference of State Legislatures. Also, because this is a foray into federalism—unheard of before, making this a Federal issue, not a State issue—the Consumer Federation of America, the Consumers Unions, Public Citizen, and Vietnam Veterans of America. There are many other groups as well.

This amendment does more to see that folks don't get access to a jury. And the irony of it is that the national Republican effort seems to be to talk badly about Washington and Congress and drain the swamp and believe in the individuals back home and folks at home.

Well, the most pure form of justice comes from a jury where you have a jury of your peers in your own community who are chosen to determine what happened, to determine the facts, and to determine the damages. Instead, they are proposing that the Republicans in Congress know better what to do to put limits on what a jury can award their fellow citizens.

And they are also putting limitations on the statute of limitations and lessening that, and on joint and several liability, which go toward helping people who have gotten judgments be able to collect on judgments, which is so important. A judgment is no good unless you can collect on it. It is just counter to what the Republican Party philosophy generally is and has been, that I have kind of perceived recently, about being against Washington and laws coming on down high from Washington, D.C.

□ 1530

Much of what we heard at our discussion from a gentleman from West Virginia was about a West Virginia law. That is what you are supposed to have is a West Virginia law. Then somebody else talked about a Texas law, and they are holding up a California law.

Each State is supposed to make its own laws. We have got 50 States. They

talk a lot about the 50 States and the electoral college, and the States have an important function in our system of government. They are supposed to be areas where they have provinces and act. Juries, jury trials, and trial courts, that is all State law, and that should be determined by West Virginia, Texas, California, and Florida, not up here.

This bill, when it went through committee, passed by one vote because a couple of folks—I think it was Judge POE and Judge GOHMERT; I am pretty sure it was the two of them—two judges from the State of Texas felt it went too far in encroaching on the States' province dealing with tort law. This amendment just goes the same direction.

This is just unfortunate that what we are trying to do is help, really, insurance companies; it is not so much doctors. Doctors might benefit some, but it is the insurance companies that would benefit the most, and that is who this is about.

So we oppose the amendment and we oppose the bill. We support the American people and the right of the people and the juries to dispense justice that the facts dictate and that justice demands.

Mr. Chairman, I reserve the balance of my time.

Mr. SESSIONS. Mr. Chairman, perhaps the debate that the gentleman from Iowa (Mr. KING) had was completely clear, which I would disagree with that statement. The gentleman from Iowa stated very clearly that there are surgeries, there are procedures, and there are processes that cost the Federal Government hundreds of millions, and the gentleman even went into the billions of dollars, which are parts of practices of medicine that doctors do as a defensive part of medicine to avoid exactly what we are talking about: getting sued. It is costing the Federal Government an enormous amount of money.

The gentleman did refer to two Members of Congress from Texas. We will see how they vote.

But the clarifying amendments that we are offering now, amendment No. 1 and amendment No. 2, come directly from negotiations with and understanding with the Texas Medical Association and the National Physicians' Policy Council to ensure that, in fact, the compliance is made that people not only in Texas, but also in other States, would have that would offer a physician the ability for them to use their knowledge, their training, and their expertise as opposed to practicing defensive medicine that harms every single taxpayer. That is why we are offering this today.

I am delighted. I believe what we have done is right.

Mr. Chairman, I yield such time as he may consume to the gentleman from Iowa (Mr. KING).

Mr. KING of Iowa. Mr. Chairman, I thank the gentleman from Texas for yielding.

I want to express, Mr. Chairman, how much I appreciate the work that has been done by so many people and their part in this bill.

I rise in support of this improving amendment—it comes out of the minds of Texas, I might add—which would clarify the timing of the statute of limitations in the provision base of the bill.

Mr. Chairman, I urge the adoption of the Sessions amendment.

Mr. SESSIONS. Mr. Chairman, I reserve the balance of my time.

Mr. COHEN. Mr. Chairman, this is an amendment—a bad amendment—that makes a bad bill worse. All those folks from Texas ought to be going to Austin. Where this belongs is in Austin, not in Washington. These are State issues.

We had an amendment that said that these defensive measures that you say that they are taking that waste all this money and time, we had an amendment that said these caps wouldn't apply if you cut off the wrong arm, and you all wouldn't take it. So I don't know how many defensive measures they have got.

This is the right arm; this is the left arm. When you go in to do surgery and you have to amputate an arm, take off the right arm or the left arm, but not the wrong arm. If you take off the wrong arm—damages big time. You all didn't accept that amendment.

This is shutting the courthouse door, closing down juries, and not having faith in the American people to be able to ascertain facts and damages as they have throughout time immemorial. It is a power grab from Washington. It is the swamp draining over to flood the State houses of all 50 of our States.

Mr. Chairman, I yield back the balance of my time.

Mr. SESSIONS. Mr. Chairman, I believe the gentleman, Mr. KING, has argued the point very successfully, and that is we believe it is in the best interests of not only the taxpayers, but physicians, physicians who have used their training, their expertise, and their knowledge to perform the necessary missions that are necessary. When those physicians do make mistakes—and mistakes will happen—then we believe that the rights of those that are reported in California and Texas would be consistent with those that would be great for the country. We are willing to share, and we appreciate the opportunity to present this.

Mr. Chairman, I would ask my colleagues to support this amendment that I have presented today, and I yield back the balance of my time.

The CHAIR. The question is on the amendment offered by the gentleman from Texas (Mr. SESSIONS).

The amendment was agreed to.

AMENDMENT NO. 2 OFFERED BY MR. SESSIONS

The CHAIR. It is now in order to consider amendment No. 2 printed in House Report 115-179.

Mr. SESSIONS. Mr. Chairman, I have an amendment at the desk as the des-

ignee of the gentleman from Texas (Mr. BURGESS).

The CHAIR. The Clerk will designate the amendment.

The text of the amendment is as follows:

Page 12, line 13, insert after "goods or services" the following: "(including safety, professional, or administrative services directly related to health care)".

The CHAIR. Pursuant to House Resolution 382, the gentleman from Texas (Mr. SESSIONS) and a Member opposed each will control 5 minutes.

The Chair recognizes the gentleman from Texas.

Mr. SESSIONS. Mr. Chairman, I offer my thanks not only to Chairman BOB GOODLATTE, but also the distinguished gentleman from Iowa (Mr. KING) for his work on behalf of all Members on the floor today, for his work not only for the Judiciary Committee, but people of faith and confidence that this country can address the issues and needs.

Mr. Chairman, I offer this amendment with Dr. MICHAEL BURGESS, who is also from my home State of Texas as well as a member of the Rules Committee.

The goal of our amendment is to clarify that healthcare liability claims covered by the legislation include safety, professional, and administrative services directly related to healthcare. In other words, we are bringing in the entire scope, not just necessarily the medical procedure.

I was glad to see that H.R. 1215 adopts many of the reforms that States across this country have thoroughly tested in their efforts to improve medical liability law, including my home State of Texas.

Not all claims asserted against healthcare providers arise from the direct provision of medical care. My amendment addresses the full spectrum of healthcare claims by following the model that Texas has successfully implemented.

Common examples of administrative claims related to healthcare are cases for negligence involving credentialing fraud against hospitals and those serving on their professional committees. In these cases, the plaintiff typically is not a patient of the physician serving on the committee; however, there is significant exposure to liability for the physician.

Safety claims are another necessary component in the scope of this bill. In these cases, a patient's injury does not arise out of the rendition of healthcare, but pertains to the safety of the patient.

The Texas Medical Association, the Texas Alliance for Patient Access, and the National Physicians' Policy Council are among those organizations who not only support this narrowly tailored amendment, but also their support of the entire bill and the inclusions of this amendment.

Mr. Chairman, I reserve the balance of my time.

Mr. COHEN. Mr. Chairman, I claim the time in opposition.

The CHAIR. The gentleman from Tennessee is recognized for 5 minutes.

Mr. COHEN. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, this is called the Protecting Access to Care Act, but that is really a misnomer because the purpose of these amendments in the bill takes as a given that there are going to be allegations that doctors, medical device companies—not exactly limited financial resources or in potential for harm—and nursing homes are going to be alleged to have committed torts against individuals and that when that happens, if this becomes law, there will be less opportunity for individuals to get their day in court.

Because most people in the United States are not wealthy, most of the people that get injured not being wealthy are going to bear the brunt of this when they don't get to court within the statute of limitations or they don't collect because of the joint and several liability changes in the law or they get less with noneconomic damages because of the \$250,000 cap.

Who is going to benefit from this? Who is going to benefit? It is going to be the person who a jury has found to have been negligent and violated their duty of care: a nursing home, a medical device company, or a physician. They are going to have less damages, less judgments against them, and less costs. Insurance companies can then make more money, and doctors will have lesser premiums.

Who loses? People who have been injured by medical device defective merchandise, nursing home negligence, or medical malpractice.

We are not talking about limiting damages and the ability to recover by having a lesser joint and several liability law. We are not talking about people who have not gotten a judgment. We are talking about people who have gotten a judgment for negligence.

Just like the Republican healthcare bill, this gives billions of dollars to the richest people in America with tax cuts at the expense of poor people who get Medicaid, people with disabilities, pregnant women, poor people, and seniors in nursing homes. They suffer.

This is a microcosm of the healthcare proposals that the Senate can't get 50 votes for—and they didn't even try for 60, which they normally do, because they knew it was not going to be that sufficient, but now they can't even get 50 under reconciliation—and it is a microcosm of hurting the poor and enriching the rich.

These are cases where there will be judgments—juries finding negligence, harm, and damages—if you get to the courthouse on time, and then you won't be able to collect as much.

So who wins? The rich, the medical device companies, the nursing homes, and the physicians. Who loses? Those who have suffered, those whom juries have found to be victims, and victims who should be able to collect but we are limiting how much they can collect

and we are making it more difficult for them to collect.

That is not what this Congress should be doing is enriching the wealthy and hurting those who have been harmed by negligence. If it is going to happen, it ought to happen in the States. So it is an attack on the 10th Amendment.

Mr. DUNCAN from Tennessee came here and gave beautiful testimony about a consistent life protecting the 10th Amendment, and that is what Mr. GOHMERT and Judge POE also did about what is left to the States. That is why this amendment and the bill are both bad.

Mr. Chairman, I reserve the balance of my time.

Mr. SESSIONS. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, the gentleman I respect very much, not only the perspective that the gentleman holds, but perhaps some of his argument could be true.

Mr. Chairman, what we are trying to do is to balance out the opportunity for the American people to have access to healthcare where, many items, they are denied.

I was reminded by the gentleman, the young chairman of the Veterans' Affairs Committee, Dr. PHIL ROE, who served his great State of Tennessee and the American people as an obstetrician and gynecologist, I was reminded of the facts of the case, as it were, where, when Texas passed this, counties all along our Texas borders received, instead of midwives and others who might perform these important services to deliver babies, all of a sudden medical professionals, doctors, came into play who had been shut out because of the fear of malpractice lawsuits against them. Texas added, in the first year, some 4,500 doctors who came to Texas knowing that it was a level playing field.

In this case, Mr. Chairman, we are arguing that the United States of America and the citizens would not have to pay outrageous amounts of money for defensive medicine, whereby physicians, in order to protect themselves and to protect themselves in a difficult circumstance, might order, as a defensive mechanism, excessive amounts of either X-rays or other procedures that really cost the government money instead of providing better healthcare.

□ 1545

This has been an advantage in the State of California, and in the State of Texas, where physicians use not only their training and their professional conduct, but they use what is in the best interest of the patient. That is why we are here today.

Mr. Chair, I yield such time as he may consume to the gentleman from Iowa (Mr. KING).

Mr. KING of Iowa. Mr. Chair, I thank the gentleman from Texas for his lead-

ership on the Rules Committee and in many other ways; and I also thank Dr. BURGESS, another gentleman from Texas on the Rules Committee whose amendment is being offered by Mr. SESSIONS.

As I listen to this dialogue, Mr. Chairman, I am just thinking that States do have rights. They have the right to control any of the healthcare services that are funded by individuals or States. This only affects that because it has Federal dollars in it. We drive at a 55-mile-an-hour speed limit because the Federal Government sets that.

So I rise in support of this amendment, but the States are not funding Medicare, Medicaid, or ObamaCare.

Mr. COHEN. Mr. Chairman, how much time do I have remaining?

The CHAIR. The gentleman from Tennessee has 1 minute remaining.

Mr. COHEN. Mr. Chair, I yield 1 minute to the gentleman from Iowa (Mr. KING), because I think it helps my case.

Mr. KING of Iowa. Mr. Chair, I am happy to accept the time from the gentleman from Tennessee and make the point that hasn't been made very well here today that—apparently, not well enough or the gentleman wouldn't have yielded the time to me, I don't believe—where there are Federal dollars involved, there have been Federal regulations that have matched along with that.

We have written all kinds of legislation in this Congress, a lot of which I disagreed with. But there was a Federal nexus, and it hasn't been litigated successfully time after time after time.

We saw ObamaCare itself was litigated over and over again and the Supreme Court came down with rulings that let that legislation stand. That is one of the reasons why we have the angst that we have today.

But the case that this usurps States' rights is thin. It is not without some consequence, but it is very thin. We have gone way over to the other side, and we have written everything that we can possibly write into this bill that respects the rights of States. There is always a Federal nexus—we can count on that—and it is so small in comparison to so many other Federal things. Some of the things in our Federal Government are overreach. This is not. This is a minimal, de minimis reach in order to regulate over-the-top trial lawyers, who are the ones who are the only losers today, Mr. Chairman.

Mr. SESSIONS. Mr. Chair, I yield back the balance of my time.

Mr. COHEN. Mr. Chair, I yield back the balance of my time.

The CHAIR. The question is on the amendment offered by the gentleman from Texas (Mr. SESSIONS).

The amendment was agreed to.

AMENDMENT NO. 3 OFFERED BY MR. ROE OF TENNESSEE

The CHAIR. It is now in order to consider amendment No. 3 printed in House Report 115-179.

Mr. ROE of Tennessee. Mr. Chairman, I have an amendment at the desk.

The CHAIR. The Clerk will designate the amendment.

The text of the amendment is as follows:

Add, at the end of the bill, the following (and amend the table of contents accordingly):

SEC. 11. LIMITATION ON EXPERT WITNESS TESTIMONY.

(a) IN GENERAL.—No person in a health care profession requiring licensure under the laws of a State shall be competent to testify in any court of law to establish the following facts—

(1) the recognized standard of acceptable professional practice and the specialty thereof, if any, that the defendant practices, which shall be the type of acceptable professional practice recognized in the defendant's community or in a community similar to the defendant's community that was in place at the time the alleged injury or wrongful action occurred,

(2) that the defendant acted with less than or failed to act with ordinary and reasonable care in accordance with the recognized standard, and

(3) that as a proximate result of the defendant's negligent act or omission, the claimant suffered injuries which would not otherwise have occurred,

unless the person was licensed to practice, in the State or a contiguous bordering State, a profession or specialty which would make the person's expert testimony relevant to the issues in the case and had practiced this profession or specialty in one of these States during the year preceding the date that the alleged injury or wrongful act occurred.

(b) APPLICABILITY.—The requirements set forth in subsection (a) shall also apply to expert witnesses testifying for the defendant as rebuttal witnesses.

(c) WAIVER AUTHORITY.—The court may waive the requirements in this subsection if it determines that the appropriate witnesses otherwise would not be available.

The CHAIR. Pursuant to House Resolution 382, the gentleman from Tennessee (Mr. ROE) and a Member opposed each will control 5 minutes.

The Chair recognizes the gentleman from Tennessee.

Mr. ROE of Tennessee. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, medical malpractice lawsuits in this country have gotten out of hand, which is hurting both providers and patients. Something must be done.

I have spent 31 years practicing medicine in Tennessee before coming to Congress. In that time, I saw my medical malpractice insurance premiums increase from \$4,000 a year to over \$50,000 a year, by the time I left practice.

Why were the premiums so expensive? My practice group took everyone: private insurance, Medicare, Medicaid, TRICARE, and the uninsured. Some practices limit their patient populations, but when you are in rural Appalachia, you take all comers.

The reality is, when you are taking care of patients with elevated risk, you get more frequent negative outcomes, increasing your risk for lawsuits, and this creates an issue for patient access to care.

Finally, right when I was leaving practice in 2008, Governor Haslam signed into law some of the best reforms we have in Tennessee, in the Tennessee Medical Malpractice Act, which created a 60-day notice statute and a certificate of good faith certifying a case has merit before it can be filed.

In 2011, Governor Haslam then signed the Tennessee Civil Justice Act into law, which contained a restriction on who could testify as an expert witness in medical malpractice litigation.

Too often, physicians practicing medicine are pitted in litigation against a professional witness who has gone to medical school but specialized in a different field and wasn't even licensed to practice in their State or a contiguous State. Mr. Chairman, that is absolutely wrong.

The fact is, these changes work. In Tennessee, we saw medical malpractice premiums reduced from 2009 to 2014 by between 25 and 40 percent, depending on the specialty. OBs saw average premiums reduced from over \$52,000 to just over \$33,000; neurosurgeons saw average premiums reduced from \$49,000 to \$35,000; cardiovascular surgeons saw their premiums go down from \$44,000 to \$31,000. There were other changes that were put into place that helped, including caps, but the fact was, this change had a major impact.

My amendment follows Tennessee's law and strengthens the changes contained in the underlying text of the bill, H.R. 1215, by adding further restrictions to those individuals who would qualify as an expert witness for medical malpractice litigation. My amendment limits who can be called as an expert witness, not only by the individual's professional accreditation, but also by his or her geographic location.

The fact is, as Tennessee's law proved, we needed medical professionals from the area where the incident in question occurred to testify as an expert, not a foreign jurisdiction hundreds of thousands of miles away. If that proves to be impossible, the court can waive this requirement if a witness that fits these criteria is otherwise unavailable.

Mr. Chairman, no one knows the people or healthcare providers in an area better than the people and healthcare providers in that area. Whether testifying for the plaintiff or defendant, it is important that those individuals called as experts really know the people in the area and aren't simply flown in from a faraway place just to get a paycheck.

We all want improved quality and lower costs of care. Reforming the litigation process is a step in the right direction.

Mr. Chairman, I encourage Members to support my amendment, and I reserve the balance of my time.

Mr. COHEN. Mr. Chairman, I claim the time in opposition.

The CHAIR. The gentleman from Tennessee is recognized for 5 minutes.

Mr. COHEN. Mr. Chair, this is the Tennessee law. I remember it. It is probably not such a wonderful law, even in Tennessee, even though some of us didn't care because Tennessee is an unusual State.

You see it when you go to Rock City. From Rock City, you see seven, eight, or nine States. That is pretty good, even without the help of the Southern College of Optometry.

If you are in Memphis, the bill would say that you could have an expert from Arlington, Virginia, come to Memphis. That is a long way, yet we are so much closer to Springfield, Illinois, or even to Dallas, Texas, or we are much closer to Baton Rouge, where they have got a lot of great doctors. Those doctors from Baton Rouge could come to Memphis. They would be closer to Memphis than somebody from Arlington, Virginia.

The fact is, the State should decide this. Tennessee made this contiguous State or your own State law. For Alaska, that means you have got Alaska. For Hawaii, it means you have got Hawaii. The States should decide who is an expert and who isn't.

It also says you have got to be in practice for the previous year. If somebody is not in practice and they are a professor at a medical school and maybe the outstanding expert on cardiovascular diseases, and they happen to be someplace like Harvard, they wouldn't be able to go to a State that is not contiguous to Massachusetts. If they weren't practicing, they wouldn't be able to be an expert at all.

These arbitrary time limits, arbitrary requirements, and arbitrary demographic limitations are not aimed at justice or saving costs. They are aimed at reducing the number of experts who might be available.

In a State, it is more difficult to get an expert to come testify because you may get ostracized by your fellow professionals. It might be easier for a plaintiff to find an expert from a State that is a little bit of a distance.

I am not that familiar with Maine. Does it touch maybe Vermont and New Hampshire? It kind of limits itself, too. In Tennessee, you would have 9 or 10 States; in Alaska, none; Hawaii, none; Maine, two. Minnesota has got to be limited because we wouldn't go to Canada because that is not part of our system.

Of course, this isn't really part of our system either because our system is a Federal system, where we give States the right to make these decisions and not make them up in Washington with a one-size-fits-all way to stop people who have been damaged by medical malpractice, medical device defects, or nursing home negligence from getting whole compensation.

We put a limit from Washington on the old person who is being taken advantage of by some individual in a nursing home or some individual who has been given a defective valve in their heart because of a medical device problem.

We in Washington, under this bill, think we know more than what a jury should know about the effects and the damages when that person testifies in that courtroom in front of that jury and before that judge and have their damages proven. You can see that individual and know the harm they have been caused, but their damages are going to be limited because of something that goes on here in Washington, D.C.

That is something the other side argues against constantly. They say things should be decided back home in the States—things like voting rights and trying to limit the opportunity for people in the Justice Department to see to it that people get a chance to vote. They say that States' rights are primary when it suits their purposes.

In Tennessee, the doctors own the medical malpractice insurance company. I think it has the word "Volunteer" in it. It is the doctors who own it. So they will be direct beneficiaries.

Mr. Chairman, I reserve the balance of my time.

Mr. ROE of Tennessee. Mr. Chairman, where the subsidies were going in our State were to the lawyers, since they got over 60 percent of any medical malpractice settlement. The poor patients got less than forty cents on the dollar.

Mr. Chairman, I yield 1 minute to the gentleman from Iowa (Mr. KING).

Mr. KING of Iowa. Mr. Chairman, I thank Dr. ROE, the gentleman from Tennessee, for bringing this amendment.

Looking at the language here, it is interesting that the concern was that the witnesses may not be available within a large State. I notice, as I read the language, that unless the person was licensed for practice in the State or a contiguous border State—that is pretty good. If you are Hawaii, maybe not so good. But Dr. ROE, typical to his style, anticipated these things by putting the waiver authority in the last provision in the amendment, which says: "The court may waive the requirements in this subsection if it determines that the appropriate witnesses otherwise would not be available."

So this is a sound, well thought-out directive that ensures that we have a high level of professionalism.

When the gentleman earlier talked about a jury of your peers, what about having professionals who are highly credentialed that do understand the locality and the normal practices within the region?

So not only do I support this amendment, but I encourage its adoption. It requires expert witnesses to have knowledge of the standard of care in their local communities. It is a commonsense amendment, and I urge its adoption.

Mr. COHEN. Mr. Chair, I yield myself such time as I may consume.

Mr. Chair, I was going to try to find that language.

Years ago, a trial lawyer named J.D. Lee told me when I was just a 28-year-

old constitutional convention delegate: Don't go down rabbit trails. The gentleman from Iowa is throwing rabbit trails out there, and I am not going to go down one.

The fact is, this is a State issue that should be determined by the States and should be determined by judges and jurors in their jurisdiction who see the defendant and see the plaintiff with their own eyes and determine the facts as the facts dictate and justice demands, is what we hear and what we live by in jury cases. That is what we should live by in Washington in determining what damages are, and not making the decisions up here in Washington, D.C.

This is a bad amendment. It is a bad bill. It is contrary to the mantra that you normally hear from the other side.

Mr. Chairman, I yield back the balance of my time.

Mr. ROE of Tennessee. Mr. Chairman, I wish the damages did go to patients in Tennessee. They don't. The majority goes to lawyers.

Mr. Chairman, I yield the balance of my time to the gentleman from Kansas (Mr. MARSHALL), my good friend and a fellow OB/GYN.

□ 1600

Mr. MARSHALL. Mr. Chairman, I rise in support of this amendment offered by gentleman from Tennessee. Like Dr. ROE, I, too, have been an OB-GYN.

The standard of care is defined by local physicians. Let me say that again. The standard of care should be defined by local physicians, and how medicine is practiced may vary from location to location. No matter what, all physicians, especially in rural settings, don't have access to all the luxuries in tertiary centers. Demanding that experts representing either side of a dispute practice medicine in the State of jurisdiction is just common sense.

Mr. ROE of Tennessee. Mr. Chair, I yield back the balance of my time.

Mr. BUCSHON. Mr. Chair, as a physician I have seen firsthand how frivolous lawsuits against experienced physicians have hindered the health care system and increased costs to all patients.

It is imperative we address this through common sense legislation.

This amendment would require expert witnesses in medical malpractice negligence cases to have practiced in the same specialty and geographical area as the physician defendant.

This limitation ensures that the expert witness has the qualified experience with and knowledge of the standard of care recognized in their local communities. I was a heart surgeon. I was not qualified to testify in a dermatology case.

I ask my colleagues to join me in voting yes on Dr. ROE's amendment and the Protecting Access to Care Act.

The CHAIR. The question is on the amendment offered by the gentleman from Tennessee (Mr. ROE).

The amendment was agreed to.

AMENDMENT NO. 4 OFFERED BY MR. HUDSON

The CHAIR. It is now in order to consider amendment No. 4 printed in House Report 115-179.

Mr. HUDSON. Mr. Chair, I have an amendment that the desk.

The CHAIR. The Clerk will designate the amendment.

The text of the amendment is as follows:

Add, at the end of the bill, the following:

SEC. 11. COMMUNICATIONS FOLLOWING UNANTICIPATED OUTCOME.

(a) PROVIDER COMMUNICATIONS.—In any health care liability action, any and all statements, affirmations, gestures, or conduct expressing apology, fault, sympathy, commiseration, condolence, compassion, or a general sense of benevolence which are made by a health care provider or an employee of a health care provider to the patient, a relative of the patient, or a representative of the patient and which relate to the discomfort, pain, suffering, injury, or death of the patient as the result of the unanticipated outcome of medical care shall be inadmissible for any purpose as evidence of an admission of liability or as evidence of an admission against interest.

(b) STATE FLEXIBILITY.—No provision of this section shall be construed to preempt any State law (whether effective before, on, or after the date of the enactment of this Act) that makes additional communications inadmissible as evidence of an admission of liability or as evidence of an admission against interest.

SEC. 12. EXPERT WITNESS QUALIFICATIONS.

(a) IN GENERAL.—In any health care lawsuit, an individual shall not give expert testimony on the appropriate standard of practice or care involved unless the individual is licensed as a health professional in one or more States and the individual meets the following criteria:

(1) If the party against whom or on whose behalf the testimony is to be offered is or claims to be a specialist, the expert witness shall specialize at the time of the occurrence that is the basis for the lawsuit in the same specialty or claimed specialty as the party against whom or on whose behalf the testimony is to be offered. If the party against whom or on whose behalf the testimony is to be offered is or claims to be a specialist who is board certified, the expert witness shall be a specialist who is board certified in that specialty or claimed specialty.

(2) During the 1-year period immediately preceding the occurrence of the action that gave rise to the lawsuit, the expert witness shall have devoted a majority of the individual's professional time to one or more of the following:

(A) The active clinical practice of the same health profession as the defendant and, if the defendant is or claims to be a specialist, in the same specialty or claimed specialty.

(B) The instruction of students in an accredited health professional school or accredited residency or clinical research program in the same health profession as the defendant and, if the defendant is or claims to be a specialist, in an accredited health professional school or accredited residency or clinical research program in the same specialty or claimed specialty.

(3) If the defendant is a general practitioner, the expert witness shall have devoted a majority of the witness's professional time in the 1-year period preceding the occurrence of the action giving rise to the lawsuit to one or more of the following:

(A) Active clinical practice as a general practitioner.

(B) Instruction of students in an accredited health professional school or accredited residency or clinical research program in the same health profession as the defendant.

(b) **LAWSUITS AGAINST ENTITIES.**—If the defendant in a health care lawsuit is an entity that employs a person against whom or on whose behalf the testimony is offered, the provisions of subsection (a) apply as if the person were the party or defendant against whom or on whose behalf the testimony is offered.

(c) **POWER OF COURT.**—Nothing in this subsection shall limit the power of the trial court in a health care lawsuit to disqualify an expert witness on grounds other than the qualifications set forth under this subsection.

(d) **LIMITATION.**—An expert witness in a health care lawsuit shall not be permitted to testify if the fee of the witness is in any way contingent on the outcome of the lawsuit.

(e) **STATE FLEXIBILITY.**—No provision of this section shall be construed to preempt any State law (whether effective before, on, or after the date of the enactment of this Act) that places additional qualification requirements upon any individual testifying as an expert witness.

SEC. 13. AFFIDAVIT OF MERIT.

(a) **REQUIRED FILING.**—Subject to subsection (b), the plaintiff in a health care lawsuit alleging negligence or, if the plaintiff is represented by an attorney, the plaintiff's attorney shall file simultaneously with the health care lawsuit an affidavit of merit signed by a health professional who meets the requirements for an expert witness under section 14 of this Act. The affidavit of merit shall certify that the health professional has reviewed the notice and all medical records supplied to him or her by the plaintiff's attorney concerning the allegations contained in the notice and shall contain a statement of each of the following:

- (1) The applicable standard of practice or care.
- (2) The health professional's opinion that the applicable standard of practice or care was breached by the health professional or health facility receiving the notice.
- (3) The actions that should have been taken or omitted by the health professional or health facility in order to have complied with the applicable standard of practice or care.
- (4) The manner in which the breach of the standard of practice or care was the proximate cause of the injury alleged in the notice.
- (5) A listing of the medical records reviewed.

(b) **FILING EXTENSION.**—Upon motion of a party for good cause shown, the court in which the complaint is filed may grant the plaintiff or, if the plaintiff is represented by an attorney, the plaintiff's attorney an additional 28 days in which to file the affidavit required under subsection (a).

(c) **STATE FLEXIBILITY.**—No provision of this section shall be construed to preempt any State law (whether effective before, on, or after the date of the enactment of this Act) that establishes additional requirements for the filing of an affidavit of merit or similar pre-litigation documentation.

SEC. 14. NOTICE OF INTENT TO COMMENCE LAWSUIT.

(a) **ADVANCE NOTICE.**—A person shall not commence a health care lawsuit against a health care provider unless the person has given the health care provider 90 days written notice before the action is commenced.

(b) **EXCEPTIONS.**—A health care lawsuit against a health care provider filed within 6 months of the statute of limitations expiring as to any claimant, or within 1 year of the

statute of repose expiring as to any claimant, shall be exempt from compliance with this section.

(c) **STATE FLEXIBILITY.**—No provision of this section shall be construed to preempt any State law (whether effective before, on, or after the date of the enactment of this Act) that establishes a different time period for the filing of written notice.

The CHAIR. Pursuant to House Resolution 382, the gentleman from North Carolina (Mr. HUDSON) and a Member opposed each will control 5 minutes.

The Chair recognizes the gentleman from North Carolina.

Mr. HUDSON. Mr. Chairman, access to a fair and just court system is a vital part of the makeup of the United States. It is important that courts are used to seek justice, not for the financial benefit of lawyers looking to take advantage of patients. Basic protections these amendments provide from frivolous lawsuits will provide peace of mind for the vast majority of physicians who work so hard to protect and heal their patients.

Patients in States that have enacted comprehensive medical liability reform have seen their healthcare costs decrease and their access to quality medical care increase. Enacting these reforms at the Federal level will benefit patients nationwide.

All provisions within this amendment defer to State laws and directly address the issues covered.

The first provision is called the Sorry Provision. This provision would allow a physician to apologize to a patient for an unintended outcome without having that apology count against them in a court of law. Thirty-two States plus the District of Columbia have an apology provision in place.

The second issue in this amendment is Notice of Intent. This provision would require a plaintiff to provide a notice of intent to the physician 90 days before a lawsuit is filed. Cases are often settled before reaching a verdict, and this provision would encourage settlement before court proceedings begin.

The third provision is Affidavits of Merit. This provision would require a plaintiff to have a physician in the same specialty as the defendant physician to sign an affidavit certifying the merits of the case before the lawsuit could be brought to court. Twenty-seven States have some form of affidavits of merit, though the standards vary from State to State.

The final provision in the amendment is Expert Witness Qualifications. This provision would require that any expert witness called to testify during a trial would need to meet the same licensing requirements as the defendant physician. Forty-eight States plus the District of Columbia have some form of expert witness qualification, though the standards vary from State to State.

So you see, these are very common-sense provisions. They are provisions that many States already have, and they will lead to lower costs and better

care for patients, which ought to be our goal in the end.

Mr. Chairman, I reserve the balance of my time.

Mr. COHEN. Mr. Chairman, I rise in opposition to my friend's amendment.

The CHAIR. The gentleman from Tennessee is recognized for 5 minutes.

Mr. COHEN. Mr. Chairman, this amendment prohibits the introduction of apologies as evidence of liability, imposes on States the qualifications for expert witnesses in a healthcare lawsuit, requires plaintiffs to obtain a certificate of merit from a healthcare professional in order to pursue a healthcare lawsuit, and has a 90-day pre-suit notification requirement.

This amendment is very, very difficult in that it says that, if you apologize, a doctor apologizes, the hope is that the doctor can apologize and the patient may think: Oh, he apologized. That is nice. I won't sue him. But then if you decide to sue him or her, you can't put that apology in evidence against him. So it is kind of maybe crocodile tears, a crocodile apology.

But it also requires a plaintiff to get a certificate of merit from a healthcare professional to pursue a healthcare lawsuit—not from a lawyer, but from a healthcare professional. You have got to go to the fraternity to sue a fellow fraternity brother. That is a strange one.

This amendment would add numerous problematic provisions that significantly expand this bill beyond what was even discussed in the Judiciary Committee and in Rules, and it violates State sovereignty, all without any proper legislative vetting before coming to the floor. This is the first I have seen it or I think anybody has seen this proposal—not necessarily regular order.

Its apology provision is overly broad and undermines the legal right of patients. This provision states any apology by a healthcare provider given to a patient or their family is inadmissible for any purpose as evidence of liability or an admission against interest. If it is a true apology, it should be admitted, but it won't be.

The purpose of so-called apology laws that occur sometimes at the State level, which is where they should be, is to encourage a doctor to apologize to the patient for any harm while preserving that patient's ability to offer evidence of wrongdoing. Yet this amendment upends this balance by prohibiting the admission of all expressions of empathy or apology for any purpose of evidence or admission of liability.

This overbroad language undermines the patient's ability to offer evidence that he or she was harmed by wrongdoing. By making inadmissible admissions of fault by the provider, the amendment goes further than many State laws that do not prohibit admissions of fault and would still allow apology evidence to be used for purposes other than proving liability, such as impeaching a witness.

Second, the amendment imposes highly restrictive expert witness qualifications on State courts, which we just discussed with Mr. ROE's amendment. This amendment requires the expert witness to be an exact carbon copy of the defendant. The expert must teach or practice in the same specialty and must have been doing so at the time of the occurrence that forms the basis of the lawsuit and for 1 year preceding the occurrence.

Under this provision, someone with 30 years of professional experience may not qualify; whereas, a person with 1 year of experience could qualify as an expert. Indeed, this rule excludes retired professionals, many academics, and researchers from testifying as experts. It should be up to a judge in the courtroom or to a State that has province over this jurisdiction, not the Federal Government.

Third, this amendment imposes further burdens on injured plaintiffs beyond the already onerous requirements of the underlying bill before they can even file a lawsuit. The amendment requires an injured patient to obtain a certificate from a healthcare professional attesting to the legal merit of the case. This requires injured plaintiffs to find a healthcare professional, not a lawyer, to evaluate the legal merits of the case at the time of filing—closed frat house.

Certificates of merit are a costly, unnecessary obstacle and only serve to block injured plaintiffs access to the courts. There is little proof that such requirements reduce frivolous litigation or costs to medical providers, and certainly they don't help people who have been harmed by negligent treatment.

This requirement overrides State supreme court decisions in Arizona, Arkansas, Ohio, Oklahoma, and Washington, which held that similar lawsuit certification laws violated their State constitutions.

The amendment also requires an injured plaintiff to provide a healthcare provider 90 days' written notice before commencing the lawsuit. This notice requirement is another unnecessary hurdle intended to increase the cost of litigation for injured plaintiffs and dissuade them from filing suit. There is scant evidence that such notice reduces frivolous litigation or facilitates the compensation of the injured party.

Finally, the amendment represents the extreme intrusion on States' rights, which this whole bill does, and is such a flip from the normal Republican thought processes.

Each previously described provision includes the so-called State flexibility provisions in an attempt to brush off federalism concerns that these provisions are mostly one-way preemptive. They only preserve State laws that mirror the amendments' requirements and State laws which include requirements in addition to those imposed by the amendment. While it preserves State notice requirements, it overrides State laws that do not have such.

The States, not Congress, should determine the qualifications for appearing as an expert witness in State court proceedings, determine the appropriate uses of apology evidence, and decide whether certificates are proper or not.

For these reasons, I, unfortunately, have to oppose the amendment by my good friend Mr. HUDSON, who is a great Tar Heel.

I yield back the balance of my time. Mr. HUDSON. Mr. Chairman, may I ask how much how time I have remaining.

The CHAIR. The gentleman from North Carolina has 3 minutes remaining.

Mr. HUDSON. Mr. Chairman, I yield 1 minute to the gentleman from Iowa (Mr. KING).

Mr. KING of Iowa. Mr. Chairman, I thank the gentleman for yielding time to me.

Mr. Chairman, I rise in support of this improving amendment which would save even more Federal taxpayer dollars by requiring the filing of affidavits of merit from an appropriately qualified specialist, requiring that expert witnesses have specialty backgrounds relevant to the case, allowing doctors to apologize without fear of penalty, and requiring a 90-day cooling-off period before lawsuits can be filed to facilitate voluntary settlements.

I urge its adoption by the House, and I would point out that, as the gentleman from Tennessee referred to a fraternity of healthcare professionals as if somehow they couldn't come to an objective decision on their own profession, there has to be a fraternity of lawyers that are making these decisions for all of America right now. What we are seeking to do today is to bring this back to common sense, bring it back to we the people, keep it within the bounds of the Constitution, and reduce the cost of healthcare across America \$54 billion, and we are looking at a potential for \$650 billion a year.

Mr. Chairman, I urge its adoption.

Mr. HUDSON. Mr. Chairman, I thank the gentleman for his leadership on this issue, and I also would like to express my appreciation to my colleague from Tennessee.

We all care about patients and we all care about patients seeking justice, but I just think maybe we disagree how to get there at this point.

The one point he raised about the crocodile tears, the way he describes the Sorry Provision, look, doctors are human beings and sometimes things happen. It should be appropriate for a physician to be able to express those feelings that they are sorry that that happened without that being seen as some sign that there is guilt involved. So I think the Sorry Provision is important because the doctor-patient relationship is very important, and these are human beings.

The other argument that was raised, that it is an undue burden to have to have an expert witness, listen. A lot of these cases are very detailed and very

specific. If you are talking about a cardiothoracic event, you need a cardiothoracic surgeon to discuss that. A lot of these specialty fields, it is important that you have someone from that field as an expert.

Frankly, there are folks out there who have the profession of being professional witnesses. They travel around the country and testify on behalf of the plaintiff bar. Frankly, I think we need to have experts testifying that are qualified to talk about those very specific cases that they are testifying against.

The other thing that was raised is that the 90-day notice is an unfair burden on a patient. Frankly, I believe that having a little bit of time where individuals can talk could actually help that patient get to a settlement, get some redress earlier.

I don't think you are delaying any kind of justice for individuals, but I think it is important that there is notification time, there is time for both parties to communicate. I think, in the end, you might end up having justice delivered much quicker than going through a lengthy trial that could have been avoided if you had a notice in the beginning.

This amendment simply is seeking to provide justice for those who deserve it much more quickly with much less expense, but also to preserve our healthcare system.

Mr. Chairman, I urge my colleagues to support this amendment, and I yield back the balance of my time.

The CHAIR. The question is on the amendment offered by the gentleman from North Carolina (Mr. HUDSON).

The question was taken; and the Chair announced that the ayes appeared to have it.

Mr. COHEN. Mr. Chairman, I demand a recorded vote.

The CHAIR. Pursuant to clause 6 of rule XVIII, further proceedings on the amendment offered by the gentleman from North Carolina will be postponed.

AMENDMENT NO. 5 OFFERED BY MR. BARR

The CHAIR. It is now in order to consider amendment No. 5 printed in House Report 115-179.

Mr. BARR. Mr. Chair, I have an amendment at the desk.

The CHAIR. The Clerk will designate the amendment.

The text of the amendment is as follows:

Add, at the end of the bill, the following (and amend the table of contents accordingly):

SEC. 11. AFFIRMATIVE DEFENSE.

(a) IN GENERAL.—In the case of a health care lawsuit, it shall be an affirmative defense to any health care liability claim alleged therein that the defendant complied with a clinical practice guideline that was established, published, maintained, and updated on a regular basis by an eligible professional organization and that is applicable to the provision or use of health care services or medical products for which the health care liability claim is brought.

(b) DEFINITIONS.—For purposes of this section:

(1) CLINICAL PRACTICE GUIDELINE.—The term “clinical practice guideline” means systematically developed statements based on the review of clinical evidence for assisting a health care provider to determine the appropriate health care in specific clinical circumstances.

(2) ELIGIBLE PROFESSIONAL ORGANIZATION.—The term “eligible professional organization” means a national or State medical society or medical specialty society.

The CHAIR. Pursuant to House Resolution 382, the gentleman from Kentucky (Mr. BARR) and a Member opposed each will control 5 minutes.

The Chair recognizes the gentleman from Kentucky.

Mr. BARR. Mr. Chairman, I first want to commend Chairman GOODLATTE and Congressman KING and others who worked on H.R. 1215, the Protecting Access to Care Act, which aims to address the real problem of junk lawsuits in the context of medical care.

Seventy-five percent of the doctors will face a malpractice lawsuit over the course of their careers, and many of these claims are frivolous, which drives up the cost of healthcare, encourages defensive medicine, and contributes to the Nation’s severe shortage of doctors and nurses, especially in high-risk areas such as obstetrics, neurosurgery, and emergency medicine.

We need to enact sensible medical malpractice reform, and given the clear Federal interest in reducing taxpayer costs wherever Federal policy affects the distribution of healthcare, I support H.R. 1215.

However, H.R. 1215 does not go far enough to discourage the practice of defensive medicine, the provision of health services, tests, and procedures designed to shield the provider from legal liability but which may not be medically necessary or in the best interests of the patient.

Defensive medicine is a major driver of healthcare costs and also reduces the quality of patient care.

□ 1615

In that spirit, I offer this amendment, which would expand upon the reforms in H.R. 1215, to protect physicians from frivolous lawsuits, while promoting the practice of evidence-based medicine to lower costs and improve healthcare quality.

My amendment offers a legal safe harbor in the form of an affirmative defense for defendants who can show that they adhered to clinical practice guidelines in their area of medical practice. Rather than Washington-based care, the guidelines would be developed by the physician community-based on the best available scientific evidence. This allows doctors to focus on practicing medicine and improves healthcare quality by encouraging the practice of evidence-based, not defensive medicine.

A New England Journal of Medicine study on clinical practice guidelines and tort reform stated that “Safe harbor rules hold promise for realigning legal incentives with good medical practice and promoting fast uptake of

proven modes of care.” By promoting adherence to clinical practice guidelines that are already maintained by medical specialty groups, this amendment would encourage physicians to provide higher quality care, while reducing medical errors and waste.

Several States have already adopted safe harbor legislation and have significantly lowered the length and costs associated with medical malpractice cases. My amendment would build on the success of State safe harbor laws by expanding it to a national level, while not infringing on States’ ability to implement additional tort reform.

Americans deserve healthcare reform that will help lower the cost of care and protect the sacred doctor-patient relationship. The current reforms within H.R. 1215 are an important first step to reducing the high costs of medical malpractice claims. My amendment will further strengthen this legislation to promote affordable evidence-based patient care, reduce defensive medicine, and allow health professionals to focus on patients’ actual needs.

Mr. Chairman, I reserve the balance of my time.

Mr. COHEN. Mr. Chairman, I claim the time in opposition to my friend’s misguided amendment.

The Acting CHAIR (Mr. COLLINS of Georgia). The gentleman from Tennessee is recognized for 5 minutes.

Mr. COHEN. Mr. Chairman, this is incongruous with the rest of the discussion we have had. It is consistent in that it is an attempt to say that people who have been harmed won’t be able to recover, and it makes it harder to recover; and it protects the physicians—and the people—who basically are determined to have been negligent.

But, it says that, it is an affirmative defense to any healthcare liability claim—that is not just to a doctor. A healthcare liability claim could be to a nursing home or a medical device company—where the defendant complied with a clinical practice guideline developed by a national or State medical society or medical specialty society that is applicable.

They have just argued that for the plaintiff to have an expert witness, that expert witness has to come from the State where the action is brought, or a contiguous State. But, for the defendant, you can have a national practice guideline as an affirmative defense. So when you are in Memphis, you can’t get an expert witness from Harvard or the University of Michigan or the University of Southern California because those States aren’t contiguous, but the physician could get a medical society’s or a national society’s perspective and have it be an affirmative offense.

It is inconsistent. The whole purpose of this law is inconsistency, to give an advantage to those who have much and who do harm at the expense of those who have been harmed and have less. We see this continual attack on the poor and the injured.

In the healthcare bill, we talk about less opportunity because of diminution in Medicaid for the poor, disabled, seniors, and pregnant women to get healthcare. Here, we are talking about people who have been injured—actually, in fact, injured. And we are saying that a medical society’s rule should be an affirmative defense, no matter where they are. We limit the experts you can have, and we limit the damages you can collect.

And this isn’t to some specious group. This is to people who have actually been injured, and the juries in their home districts have found them to be plaintiffs who proved by a preponderance of the evidence that the defendant tort fees, or doctor, nursing home, or medical device company, breached the standard of care to which they were held to. It is giving them protections of the law given by Washington, almighty Washington.

Once again, I submit to you that the swamp is not being drained but is overflowing to flood the courthouses and not allow justice to come to those who have been harmed by negligence. For time and memorial, it has been the province of the States, the Tenth Amendment. Tort liability and court systems should be determined by legislators and bar associations, maybe medical societies, but back home, not national medical specialty societies or national medical societies as defenses, which is what this particular amendment brings forth.

I heard my friend from Tennessee say that in Tennessee, 60 percent of the verdicts go to lawyers. That is not true. He first talked about a law passed in 2008, that limits attorneys’ fees. So since then, it certainly has not been 60 percent, and even before then it wasn’t 60 percent. The typical contingency fee is a third, and nothing if you don’t win, and there are great expenses incurred.

This is closing the courthouse door to injured parties who juries have found to be injured and limiting their access to recovery. This allows a national medical society to be a part of a fraternity to give an affirmative defense to another frat brother.

I oppose the amendment, I oppose the bill, and I am in favor of an open and free court system that punishes malfeasance and rewards those who have been injured by people who do not practice up to the standard of care that is dictated for them in their own State.

Mr. Chairman, I reserve the balance of my time.

Mr. BARR. Mr. Chairman, in brief response to my friend from Tennessee, the safe harbor legislation would not supplant the standard of care, but it would allow for evidence-based medicine to improve healthcare quality. Those standards would be developed by local doctors participating in their medical societies.

Mr. Chairman, I yield to the gentleman from Iowa (Mr. KING), my friend.

Mr. KING of Iowa. Mr. Chairman, I thank the gentleman for yielding.

Mr. Chairman, I have a statement before me from Chairman GOODLATTE, the chairman of the full Judiciary Committee. I am going to represent this as his statement, but the chairman thanks the gentleman from Kentucky for his clarification while he remains opposed to the amendment because it provides an overly broad definition of the eligible professional organizations authorized to issue the guidelines that would be used as an affirmative defense, and because it is not supported by the wider coalition of medical groups supporting the base bill. He looks forward to working with the gentleman to further refine and improve his legislative proposal.

That concludes Chairman GOODLATTE's statement that he would like read into this RECORD.

And I would say on my own behalf, Mr. Chairman, that I very much appreciate the work that Mr. BARR has brought to this. The language that he presented originally, that had to be amended in order to conform with the parliamentarian, I believe, does define this with clarity. So I am inclined to support the gentleman from Kentucky. We will see what happens if there is a recorded vote.

Mr. BARR. Mr. Chairman, I thank the gentleman for those comments.

Mr. Chairman, the clinical practice guideline safe harbor policies have been supported by the American for Tax Reform, American College of Radiology, Healthcare Leadership Council, American Academy of Orthopedic Surgeons, American Society of Anesthesiologists, American Academy of Neurology, American Urological Association, American College of Surgeons, American Health Care Association, American College of Obstetricians and Gynecologists, American Association of Neurological Surgeons, Alliance of Specialty Medicine, Third Way, American College of Physicians, American College of Emergency Physicians, American Osteopathic Association, American College of Cardiologists, and the American Academy of Ophthalmology.

As originally drafted, the amendment set forth the procedure in detail.

Nevertheless, the process by which clinical practice guidelines are proved and published is well established and well known. The text of the amendment clearly references that existing and well-defined process that provides for guidelines to be proposed, submitted, approved, and published through the National Guideline Clearinghouse under the Agency for Healthcare Research and Quality. This is a process that ensures the integrity and quality of the applicable guidelines.

Mr. Chairman, I yield back the balance of my time.

Mr. COHEN. Mr. Chairman, I thank Mr. GOODLATTE for his honest testimony and submitting it. For that reason, among others, I will be voting "no" on this amendment, and I hope

that it will be found to be "no" by the Chair. Because when the chairman of the Judiciary Committee, a fine Republican lawyer, says that the amendment is beyond what they intended, it shouldn't really be part of the bill.

Mr. Chairman, I yield back the balance of my time.

The Acting CHAIR. The question is on the amendment offered by the gentleman from Kentucky (Mr. BARR).

The question was taken; and the Acting Chair announced that the noes appeared to have it.

Mr. BARR. Mr. Chairman, I demand a recorded vote.

The Acting CHAIR. Pursuant to clause 6 of rule XVIII, further proceedings on the amendment offered by the gentleman from Kentucky will be postponed.

ANNOUNCEMENT BY THE ACTING CHAIR

The Acting CHAIR. Pursuant to clause 6 of rule XVIII, proceedings will now resume on those amendments printed in House Report 115-179 on which further proceedings were postponed, in the following order:

Amendment No. 4 by Mr. HUDSON of North Carolina.

Amendment No. 5 by Mr. BARR of Kentucky.

The Chair will reduce to 2 minutes the minimum time for any electronic vote after the first vote in this series.

AMENDMENT NO. 4 OFFERED BY MR. HUDSON

The Acting CHAIR. The unfinished business is the demand for a recorded vote on the amendment offered by the gentleman from North Carolina (Mr. HUDSON) on which further proceedings were postponed and on which the ayes prevailed by voice vote.

The Clerk will redesignate the amendment.

The Clerk redesignated the amendment.

RECORDED VOTE

The Acting CHAIR. A recorded vote has been demanded.

A recorded vote was ordered.

The vote was taken by electronic device, and there were—ayes 222, noes 197, not voting 14, as follows:

[Roll No. 334]

AYES—222

Abraham	Bucshon	Dent
Aderholt	Budd	DeSantis
Allen	Burgess	DesJarlais
Arrington	Byrne	Donovan
Babin	Calvert	Duffy
Bacon	Carter (GA)	Duncan (SC)
Banks (IN)	Carter (TX)	Dunn
Barletta	Chabot	Emmer
Barr	Chaffetz	Estes (KS)
Barton	Cheney	Farenthold
Bera	Coffman	Faso
Bergman	Cole	Ferguson
Biggs	Collins (GA)	Fitzpatrick
Bilirakis	Collins (NY)	Fleischmann
Bishop (MI)	Comer	Flores
Bishop (UT)	Comstock	Fortenberry
Blackburn	Conaway	Fox
Blum	Cook	Franks (AZ)
Bost	Correa	Frelinghuysen
Brady (TX)	Costello (PA)	Gaetz
Brat	Cramer	Gallagher
Bridenstine	Crawford	Gianforte
Brooks (AL)	Cuellar	Gibbs
Brooks (IN)	Culberson	Gohmert
Buchanan	Davis, Rodney	Goodlatte
Buck	Denham	Gosar

Gowdy	Luetkemeyer	Ross
Granger	MacArthur	Rothfus
Graves (GA)	Marchant	Rouzer
Graves (LA)	Marino	Royce (CA)
Graves (MO)	Marshall	Ruiz
Grothman	Mast	Rutherford
Guthrie	McCarthy	Schweikert
Handel	McCaul	Scott, Austin
Harper	McClintock	Sensenbrenner
Harris	McHenry	Sessions
Hartzler	McKinley	Shimkus
Hensarling	McMorris	Shuster
Herrera Beutler	Rodgers	Simpson
Hice, Jody B.	McSally	Smith (MO)
Higgins (LA)	Meadows	Smith (NE)
Hill	Meehan	Smith (TX)
Holding	Messer	Smucker
Hollingsworth	Mitchell	Stefanik
Hudson	Moorenar	Stewart
Huizenga	Mooney (WV)	Taylor
Hultgren	Mullin	Tenney
Hunter	Murphy (PA)	Thompson (PA)
Hurd	Newhouse	Thornberry
Issa	Noem	Tiberi
Jenkins (KS)	Norman	Tipton
Jenkins (WV)	Nunes	Trott
Johnson (LA)	Olson	Upton
Johnson (OH)	Palazzo	Valadao
Johnson, Sam	Palmer	Wagner
Jordan	Paulsen	Walberg
Joyce (OH)	Pearce	Walden
Katko	Peters	Walker
Kelly (MS)	Peterson	Walorski
Kelly (PA)	Pittenger	Walters, Mimi
King (IA)	Poliquin	Weber (TX)
King (NY)	Ratcliffe	Webster (FL)
Kinzinger	Reed	Wenstrup
Knight	Reichert	Westerman
Kustoff (TN)	Rice (SC)	Williams
Labrador	Roby	Wilson (SC)
LaHood	Roe (TN)	Wittman
LaMalfa	Rogers (KY)	Womack
Lamborn	Rohrabacher	Woodall
Lance	Rokita	Yoder
Latta	Rooney, Francis	Yoho
Lewis (MN)	Rooney, Thomas	Young (AK)
Loudermilk	J.	Young (IA)
Love	Rosen	Zeldin
Lucas	Roskam	

NOES—197

Adams	DelBene	Kilmer
Aguilar	Demings	Kind
Amash	DeSaulnier	Krishnamoorthi
Barragán	Deutch	Kuster (NH)
Bass	Diaz-Balart	Larsen (WA)
Beatty	Dingell	Larson (CT)
Beyer	Doggett	Lawrence
Bishop (GA)	Doyle, Michael	Lawson (FL)
Blumenauer	F.	Lee
Blunt Rochester	Duncan (TN)	Levin
Bonamici	Ellison	Lewis (GA)
Boyle, Brendan	Engel	Lieu, Ted
F.	Eshoo	Lipinski
Brady (PA)	Españillat	LoBiondo
Brown (MD)	Esty (CT)	Loeb
Brownley (CA)	Evans	Lofgren
Bustos	Foster	Lowenthal
Butterfield	Frankel (FL)	Lowey
Capuano	Fudge	Lujan Grisham,
Carbajal	Gabbard	M.
Cárdenas	Gállego	Luján, Ben Ray
Carson (IN)	Garamendi	Lynch
Cartwright	Garrett	Maloney,
Castor (FL)	Gonzalez (TX)	Carolyn B.
Castro (TX)	Gotthelmer	Maloney, Sean
Chu, Judy	Green, Al	Massie
Cicilline	Green, Gene	Matsui
Clark (MA)	Griffith	McCollum
Clarke (NY)	Grijalva	McEachin
Clay	Gutiérrez	McGovern
Cleaver	Hanabusa	Meng
Clyburn	Hastings	Moore
Cohen	Heck	Moulton
Connolly	Higgins (NY)	Murphy (FL)
Conyers	Himes	Nadler
Cooper	Hoyer	Neal
Costa	Huffman	Nolan
Courtney	Jackson Lee	Norcross
Crist	Jayapal	O'Halleran
Crowley	Jeffries	O'Rourke
Curbelo (FL)	Johnson (GA)	Pallone
Davidson	Kaptur	Panetta
Davis (CA)	Keating	Pascarelli
Davis, Danny	Kelly (IL)	Payne
DeFazio	Kennedy	Pelosi
DeGette	Khanna	Perlmutter
Delaney	Kihuen	Perry
DeLauro	Kildee	Pingree

Pocan
Poe (TX)
Polis
Posey
Price (NC)
Quigley
Raskin
Rice (NY)
Richmond
Ros-Lehtinen
Roybal-Allard
Ruppersberger
Rush
Russell
Ryan (OH)
Sanchez
Sanford
Sarbanes
Schakowsky
Schiff

Schneider
Schrader
Scott (VA)
Scott, David
Serrano
Sewell (AL)
Shea-Porter
Sherman
Sinema
Sires
Slaughter
Smith (NJ)
Smith (WA)
Soto
Speler
Suozzi
Swalwell (CA)
Takano
Thompson (CA)
Thompson (MS)

Titus
Tonko
Torres
Tsongas
Turner
Vargas
Veasey
Vela
Velázquez
Visclosky
Walz
Wasserman
Schultz
Waters, Maxine
Watson Coleman
Welch
Wilson (FL)
Yarmuth

NOT VOTING—14

Amodei
Black
Cummings
Johnson, E. B.
Jones

Langevin
Long
McNerney
Meeks
Napolitano

Renacci
Rogers (AL)
Scalise
Stivers

□ 1646

Ms. TSONGAS changed her vote from “aye” to “no.”

So the amendment was agreed to.

The result of the vote was announced as above recorded.

Stated against:

Ms. EDDIE BERNICE JOHNSON of Texas. Mr. Chair, I was unavoidably detained. Had I been present, I would have voted “nay” on rollcall No. 334.

AMENDMENT NO. 5 OFFERED BY MR. BARR

The Acting CHAIR. The unfinished business is the demand for a recorded vote on the amendment offered by the gentleman from Kentucky (Mr. BARR) on which further proceedings were postponed and on which the noes prevailed by voice vote.

The Clerk will redesignate the amendment.

The Clerk redesignated the amendment.

RECORDED VOTE

The Acting CHAIR. A recorded vote has been demanded.

A recorded vote was ordered.

The Acting CHAIR. This is a 2-minute vote.

The vote was taken by electronic device, and there were—ayes 116, noes 310, not voting 7, as follows:

[Roll No. 335]

AYES—116

Abraham
Aderholt
Allen
Amodei
Barletta
Barr
Bera
Bergman
Billirakis
Bishop (UT)
Brooks (AL)
Bucshon
Budd
Carter (GA)
Cheney
Cole
Comstock
Correa
Costello (PA)
Cuellar
Davidson
Davis, Rodney
Dent
DeSantis
DesJarlais
Duffy

Duncan (SC)
Dunn
Farenthold
Ferguson
Fitzpatrick
Fleischmann
Fortenberry
Foxy
Franks (AZ)
Gaetz
Gallagher
Gianforte
Gosar
Graves (GA)
Graves (LA)
Graves (MO)
Guthrie
Harris
Hice, Jody B.
Holding
Hollingsworth
Hudson
Huizenga
Hunter
Jenkins (KS)
Jenkins (WV)

Johnson (LA)
Joyce (OH)
Kaptur
Kelly (PA)
King (IA)
Kustoff (TN)
Labrador
LaMalfa
Lamborn
Loudermilk
MacArthur
Marchant
Marino
Marshall
Mast
McCaul
McMorris
Rodgers
Meadows
Meehan
Mooney (WV)
Mullin
Norman
Nunes
Palmer
Pearce

Peters
Rice (SC)
Roe (TN)
Rogers (KY)
Rohrabacher
Rokita
Rooney, Thomas J.
Rosen
Roskam
Ross
Rothfus
Rouzer
Ruiz

Schrader
Schweikert
Scott, Austin
Sessions
Simpson
Sinema
Smith (MO)
Smith (NE)
Smucker
Stewart
Tenney
Thompson (PA)
Tiberi
Valadao

NOES—310

Adams
Aguliar
Amash
Arrington
Babin
Bacon
Banks (IN)
Barragan
Barton
Bass
Beatty
Beyer
Biggs
Bishop (GA)
Bishop (MI)
Black
Blackburn
Blum
Blumenauer
Blunt Rochester
Bonamici
Bost
Boyle, Brendan F.
Brady (PA)
Brady (TX)
Brat
Bridenstine
Brooks (IN)
Brown (MD)
Brownley (CA)
Buchanan
Buck
Burgess
Bustos
Butterfield
Byrne
Calvert
Capuano
Carbajal
Cárdenas
Carson (IN)
Carter (TX)
Cartwright
Castor (FL)
Castro (TX)
Chabot
Chaffetz
Chu, Judy
Cicilline
Clark (MA)
Clarke (NY)
Clay
Cleaver
Clyburn
Coffman
Cohen
Collins (GA)
Collins (NY)
Comer
Conaway
Connolly
Conyers
Cook
Cooper
Costa
Courtney
Cramer
Crawford
Crist
Crowley
Culberson
Curbelo (FL)
Davis (CA)
Davis, Danny
DeFazio
DeGette
Delaney
DeLauro
DeBene
Demings
Denham
DeSaulnier

Deutch
Diaz-Balart
Dingell
Doggett
Donovan
Doyle, Michael F.
Duncan (TN)
Ellison
Emmer
Engel
Eshoo
Españillat
Estes (KS)
Esty (CT)
Evans
Faso
Flores
Foster
Frankel (FL)
Frelinghuysen
Fudge
Gabbard
Gallego
Garrett
Gibbs
Gohmert
Gonzalez (TX)
Goodlatte
Gottheimer
Gowdy
Granger
Green, Al
Green, Gene
Griffith
Grijalva
Grothman
Gutiérrez
Hanabusa
Handel
Harper
Hartzler
Hastings
Heck
Hensarling
Herrera Beutler
Higgins (LA)
Higgins (NY)
Hill
Himes
Hoyer
Huffman
Hultgren
Hurd
Issa
Jackson Lee
Jayapal
Jeffries
Johnson (GA)
Johnson (OH)
Johnson, E. B.
Johnson, Sam
Jones
Jordan
Katko
Keating
Kelly (IL)
Kelly (MS)
Kennedy
Khanna
Kihuen
Kildee
Kilmer
Kind
King (NY)
Kinzinger
Knight
Krishnamoorthi
Kuster (NH)
LaHood
Lance
Langevin
Larsen (WA)

Wagner
Walberg
Walker
Webster (FL)
Wenstrup
Westerman
Williams
Wilson (SC)
Woodall
Yoder
Young (AK)
Young (IA)

Larson (CT)
Latta
Lawrence
Lawson (FL)
Lee
Levin
Lewis (GA)
Lewis (MN)
Lieu, Ted
Lipinski
LoBiondo
Loeback
Lofgren
Love
Lowenthal
Lowey
Lucas
Luetkemeyer
Lujan Grisham, M.

Luján, Ben Ray
Lynch
Maloney,
Carolyn B.
Maloney, Sean
Massie
Matsui
McCarthy
McClintock
McCollum
McEachin
McGovern
McHenry
McKinley
McNerney
McSally
Meeks
Meng
Messer
Mitchell
Moolenaar
Moore
Moulton
Murphy (FL)
Murphy (PA)
Nadler
Neal
Newhouse
Noem
Nolan
Norcross
O'Halloran
O'Rourke
Olson
Palazzo
Pallone
Panetta
Pascarella
Paulsen
Payne
Pelosi
Perlmutter
Perry
Peterson
Pingree
Pittenger
Pocan
Poe (TX)
Poliquin
Polis
Posey
Price (NC)
Quigley
Raskin
Ratcliffe
Reed
Reichert
Rice (NY)
Richmond
Roby
Rogers (AL)
Rooney, Francis
Ros-Lehtinen

Roybal-Allard
Royce (CA)
Ruppersberger
Rush
Russell
Rutherford
Ryan (OH)
Sánchez
Sanford
Sarbanes
Schakowsky
Schiff
Schneider
Scott (VA)
Scott, David
Sensenbrenner
Serrano
Sewell (AL)
Shea-Porter
Sherman
Shimkus
Shuster

Sires
Slaughter
Smith (NJ)
Smith (TX)
Smith (WA)
Soto
Speier
Stefanik
Suozzi
Swalwell (CA)
Takano
Taylor
Thompson (CA)
Thompson (MS)
Thornberry
Tipton
Tonko
Torres
Trott
Tsongas
Turner

NOT VOTING—7

Cummings
Garamendi
Long

Napolitano
Renacci
Scalise

Stivers

ANNOUNCEMENT BY THE ACTING CHAIR

The Acting CHAIR (during the vote). There is 1 minute remaining.

□ 1653

Mr. MICHAEL F. DOYLE of Pennsylvania changed his vote from “aye” to “no.”

Messrs. RICE of South Carolina and DENT changed their vote from “no” to “aye.”

So the amendment was rejected.

The result of the vote was announced as above recorded.

Stated against:

Mr. LANGEVIN. Mr. Chair, on rollcall vote 335, I was unavoidably detained. Had I been present, I would have voted “no.”

The Acting CHAIR (Mr. YODER). The question is on the amendment in the nature of a substitute, as amended.

The amendment was agreed to.

The Acting CHAIR. Under the rule, the Committee rises.

Accordingly, the Committee rose; and the Speaker pro tempore (Mr. COLLINS of Georgia) having assumed the chair, Mr. YODER, Acting Chair of the Committee of the Whole House on the state of the Union, reported that that Committee, having had under consideration the bill (H.R. 1215) to improve patient access to health care services and provide improved medical care by reducing the excessive burden the liability system places on the health care delivery system, and, pursuant to House Resolution 382, he reported the bill back to the House with an amendment adopted in the Committee of the Whole.

The SPEAKER pro tempore. Under the rule, the previous question is ordered.

Is a separate vote demanded on any amendment to the amendment reported from the Committee of the Whole?

If not, the question is on the amendment in the nature of a substitute, as amended.

The amendment was agreed to.

The SPEAKER pro tempore. The question is on the engrossment and third reading of the bill.

The bill was ordered to be engrossed and read a third time, and was read the third time.

MOTION TO RECOMMIT

Ms. KUSTER of New Hampshire. Mr. Speaker, I have a motion to recommit at the desk.

The SPEAKER pro tempore. Is the gentlewoman opposed to the bill?

Ms. KUSTER of New Hampshire. I am opposed to the bill in its current form.

The SPEAKER pro tempore. The Clerk will report the motion to recommit.

The Clerk read as follows:

Ms. KUSTER of New Hampshire moves to recommit the bill H.R. 1215 to the Committee on the Judiciary with instructions to report the same back to the House forthwith with the following amendment:

Add, at the end of the bill, the following (and conform the table of contents accordingly):

SEC. 11. COMBATTING THE OPIOIDS EPIDEMIC.

For purposes of this Act, the term “health care lawsuit”, as defined in section 7, does not include a claim or action which pertains to the grossly negligent prescription of opioids.

Mr. GAETZ (during the reading). Mr. Speaker, I ask unanimous consent to dispense with the reading.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Florida?

There was no objection.

The SPEAKER pro tempore. The gentlewoman is recognized for 5 minutes.

Ms. KUSTER of New Hampshire. Mr. Speaker, this is the final amendment to the bill, which will not kill the bill or send it back to committee. If adopted, the bill will immediately proceed to final passage as amended.

Like so many communities and States across this country, New Hampshire has been devastated by the heroin and opioid epidemic. Last year alone, my State lost 500 people to substance use disorder.

Helping families, first responders, treatment providers, law enforcement officials, and family advocates in the Granite State confront this crisis has been my number one priority in Congress.

In 2015, Mr. Guinta and I founded the Bipartisan Congressional Heroin Task Force to raise awareness of this crisis and to advocate in a collaborative way for solutions at the Federal level. I am proud to report that our bipartisan task force is now 90 members strong, and we have made important progress in passing legislation and securing critical funding.

But the causes of this crisis are complex, requiring a multifaceted approach addressing every angle of the epidemic, from treatment to recovery, from education and prevention to law enforcement and interdiction.

A primary cause of opioid misuse resulting in heroin dependence is the overprescribing of opioid pain medication.

The data is astonishing. A December 2016 study found that opioids were prescribed to 91 percent of patients after they had experienced an overdose, and, in fact, 63 percent of patients on high-

dose opioids were still prescribed high-dose opioids after overdosing.

We have all heard the stories: teens who had their wisdom teeth removed receiving 30-day supplies of opioids, or a person with back pain receiving prescriptions for extended release opioids even though Tylenol would keep them comfortable.

America consumes 80 percent of the global supply of opioid medication, and 650,000 opioid prescriptions are written every single day.

Earlier this year, a study by the Centers for Disease Control and Prevention found the following extraordinary fact: if 100 people take opioid medication for 1 day, 6 percent will still be using 30 days later; and if 100 people take opioid medication for 30 days, 35 percent of those patients will still be using opioids a year later.

Our task force is working closely with the medical community to strengthen prescribing practices so that patients can manage their pain in an effective and responsible way.

Through my role on the Veterans' Affairs Committee, I am working with my colleagues to improve pain management practices at the VA and to better understand alternative methods for pain management.

The White River Junction VA facility in Vermont serving New Hampshire veterans is a great example where they have cut opioid prescriptions nearly in half by incorporating alternative treatments.

While there is much work that we can do to understand this issue, there remain bad actors across this country who are exploiting those who suffer from substance use disorder for their own financial gain.

In rural communities and elsewhere, pill mills churn out opioid prescriptions with no regard for the well-being of their patients. And just last month, a doctor in New England pled guilty to healthcare fraud for overprescribing opioids, including writing more than 1,100 Oxycodone prescriptions in a single month.

Victims of exploitative prescribing practices must have the unencumbered capacity of our legal system to recoup their damages and to deter negative industry practices.

I am concerned that arbitrary limitations in this legislation on legal damages could limit their ability to effectively respond to the opioid epidemic, and that is why my amendment would simply exempt from the legislation any claim or action that pertains to grossly negligent prescription of opioids. Should this bill become law, this provision will help protect those who have been exploited by predatory physicians operating pill mills.

There is so much we should do to roll back this crisis, and I look forward to our continued bipartisan work. But today I urge my colleagues to approve this motion.

Mr. Speaker, I yield back the balance of my time.

Mr. GAETZ. Mr. Speaker, I rise to oppose the motion to recommit.

The SPEAKER pro tempore. The gentleman from Florida is recognized for 5 minutes.

Mr. GAETZ. Mr. Speaker, the motion to recommit is ambiguous, as there is no legal standard currently for that which constitutes gross negligence in the area of prescriptions.

Already this legislation does not apply to circumstances in which there is criminal conduct. That means that bad doctors with bad intent will be prosecuted, and in every State in America, there are legal standards by which those very doctors would lose their license were they to engage in the conduct that the gentlewoman highlighted.

Mr. Speaker, healthcare costs are rising at alarming rates due to the failures of ObamaCare. This bill will reduce healthcare costs. It will improve the quality of care received.

Mr. Speaker, through this underlying legislation, we will enhance the relationship between patients and doctors. We will reduce frivolous litigation. And by ultimately addressing the challenges that arise with increasing healthcare costs, we will make it more easy to get to the affordability challenges with healthcare coverage.

This will ultimately increase wages for the American worker because, due to the failures of ObamaCare, more businesses are having to put money into healthcare premiums and not into wages, not into job creation, and not into the success of the American people.

Mr. Speaker, if what we really aspire to are better healthcare outcomes and more doctors able to treat people who are dealing with the challenges of opioid addiction, I would ask my colleagues to oppose this motion to recommit, support this bill, and get better healthcare outcomes for the American people.

Mr. Speaker, I yield back the balance of my time.

The SPEAKER pro tempore. Without objection, the previous question is ordered on the motion to recommit.

There was no objection.

The SPEAKER pro tempore. The question is on the motion to recommit.

The question was taken; and the Speaker pro tempore announced that the noes appeared to have it.

RECORDED VOTE

Ms. KUSTER of New Hampshire. Mr. Speaker, I demand a recorded vote.

A recorded vote was ordered.

The SPEAKER pro tempore. Pursuant to clause 8 and clause 9 of rule XX, this 5-minute vote on the motion to recommit will be followed by 5-minute votes on:

Passage of the bill, if ordered; and

The motion to suspend the rules and pass H.R. 1500.

The vote was taken by electronic device, and there were—ayes 191, noes 235, not voting 7, as follows:

[Roll No. 336]

AYES—191

Adams	Gallego	O'Halleran
Aguilar	Garamendi	O'Rourke
Barragán	Gonzalez (TX)	Pallone
Bass	Gottheimer	Panetta
Beatty	Green, Al	Pascarell
Bera	Green, Gene	Payne
Beyer	Grijalva	Pelosi
Bishop (GA)	Gutiérrez	Perlmutter
Blumenauer	Hanabusa	Peters
Blunt Rochester	Hastings	Peterson
Bonamici	Heck	Pingree
Boyle, Brendan	Higgins (NY)	Pocan
F.	Himes	Polis
Brady (PA)	Hoyer	Price (NC)
Brown (MD)	Huffman	Quigley
Brownley (CA)	Jackson Lee	Raskin
Bustos	Jayapal	Rice (NY)
Butterfield	Jeffries	Richmond
Capuano	Johnson (GA)	Rosen
Carbajal	Johnson, E. B.	Royal-Allard
Cárdenas	Kaptur	Ruiz
Carson (IN)	Keating	Ruppersberger
Cartwright	Kelly (IL)	Rush
Castor (FL)	Kennedy	Ryan (OH)
Castro (TX)	Khanna	Sánchez
Chu, Judy	Kihuen	Sarbanes
Cicilline	Kildee	Schakowsky
Clark (MA)	Kilmer	Schiff
Clarke (NY)	Kind	Schneider
Clay	Krishnamoorthi	Schrader
Cleaver	Kuster (NH)	Scott (VA)
Clyburn	Langevin	Scott, David
Cohen	Larsen (WA)	Serrano
Connolly	Larson (CT)	Sewell (AL)
Conyers	Lawrence	Shea-Porter
Cooper	Lawson (FL)	Sherman
Correa	Lee	Sinema
Costa	Levin	Sires
Courtney	Lewis (GA)	Slaughter
Crist	Lieu, Ted	Smith (WA)
Crowley	Lipinski	Soto
Cuellar	Loebach	Speier
Davis (CA)	Lofgren	Suozy
Davis, Danny	Lowenthal	Swalwell (CA)
DeFazio	Lowe	Takano
DeGette	Lujan Grisham,	Thompson (CA)
Delaney	M.	Thompson (MS)
DeLauro	Luján, Ben Ray	Titus
DelBene	Lynch	Tonko
Demings	Maloney,	Torres
DeSaulnier	Carolyn B.	Tsongas
Deutch	Maloney, Sean	Vargas
Dingell	Matsui	Veasey
Doggett	McCollum	Vela
Doyle, Michael	McEeachin	Velázquez
F.	McGovern	Visclosky
Ellison	McNerney	Walz
Engel	Meeks	Wasserman
Eshoo	Meng	Schultz
Españat	Moore	Waters, Maxine
Esty (CT)	Moulton	Watson Coleman
Evans	Murphy (FL)	Welch
Foster	Nadler	Wilson (FL)
Frankel (FL)	Neal	Yarmuth
Fudge	Nolan	
Gabbard	Norcross	

NOES—235

Abraham	Budd	Diaz-Balart
Aderholt	Burgess	Donovan
Allen	Byrne	Duffy
Amash	Calvert	Duncan (SC)
Amodei	Carter (GA)	Duncan (TN)
Arrington	Carter (TX)	Dunn
Babin	Chabot	Emmer
Bacon	Chaffetz	Estes (KS)
Banks (IN)	Cheney	Farenthold
Barletta	Coffman	Faso
Barr	Cole	Ferguson
Barton	Collins (GA)	Fitzpatrick
Bergman	Collins (NY)	Fleischmann
Biggs	Comer	Flores
Bilirakis	Comstock	Fortenberry
Bishop (MI)	Conaway	Foxx
Bishop (UT)	Cook	Franks (AZ)
Black	Costello (PA)	Frelinghuysen
Blackburn	Cramer	Gaetz
Blum	Crawford	Gallagher
Bost	Culberson	Garrett
Brat	Curbelo (FL)	Gianforte
Bridenstine	Davidson	Gibbs
Brooks (AL)	Davis, Rodney	Gohmert
Brooks (IN)	Denham	Goodlatte
Buchanan	Dent	Gosar
Buck	DeSantis	Gowdy
Bucshon	DesJarlais	Granger

Graves (GA)	MacArthur	Ross
Graves (LA)	Marchant	Rothfus
Graves (MO)	Marino	Rouzer
Griffith	Marshall	Royce (CA)
Grothman	Massie	Russell
Guthrie	Mast	Rutherford
Handel	McCarthy	Sanford
Harper	McCaul	Schweikert
Harris	McClintock	Scott, Austin
Hartzer	McHenry	Sensenbrenner
Hensarling	McKinley	Sessions
Herrera Beutler	McMorris	Shimkus
Hice, Jody B.	Rodgers	Shuster
Higgins (LA)	McSally	Simpson
Hill	Meadows	Smith (MO)
Holding	Meehan	Smith (NE)
Hollingsworth	Messer	Smith (NJ)
Hudson	Mitchell	Smith (TX)
Huizenga	Moolenaar	Smucker
Hultgren	Mooney (WV)	Stefanik
Hunter	Mullin	Stewart
Hurd	Murphy (PA)	Taylor
Issa	Newhouse	Tenney
Jenkins (KS)	Noem	Thompson (PA)
Jenkins (WV)	Norman	Thornberry
Johnson (LA)	Nunes	Tiberi
Johnson (OH)	Olson	Tipton
Johnson, Sam	Palazzo	Trott
Jones	Palmer	Turner
Jordan	Paulsen	Upton
Joyce (OH)	Pearce	Valadao
Katko	Perry	Wagner
Kelly (MS)	Pittenger	Walberg
Kelly (PA)	Poe (TX)	Walden
King (IA)	Poliquin	Walker
King (NY)	Posey	Walorski
Kinzinger	Ratcliffe	Walters, Mimi
Knight	Reed	Weber (TX)
Kustoff (TN)	Reichert	Webster (FL)
Labrador	Rice (SC)	Wenstrup
LaHood	Roby	Westerman
LaMalfa	Roe (TN)	Williams
Lamborn	Rogers (AL)	Wilson (SC)
Lance	Rogers (KY)	Wittman
Latta	Rohrabacher	Womack
Lewis (MN)	Rokita	Woodall
LoBiondo	Rooney, Francis	Yoder
Loudermilk	Rooney, Thomas	Yoho
Love	J.	Young (AK)
Lucas	Ros-Lehtinen	Young (IA)
Luetkemeyer	Roskam	Zeldin

NOT VOTING—7

Brady (TX)	Napolitano	Stivers
Cummings	Renacci	
Long	Scalise	

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore (during the vote). There are 2 minutes remaining.

□ 1712

So the motion to recommit was rejected.

The result of the vote was announced as above recorded.

Stated against:

Mr. BRADY of Texas. Mr. Speaker, on roll-call no. 336, I was unavoidably detained to cast my vote in time. Had I been present, I would have voted "no."

The SPEAKER pro tempore. The question is on the passage of the bill.

The question was taken; and the Speaker pro tempore announced that the ayes appeared to have it.

RECORDED VOTE

Mr. CONYERS. Mr. Speaker, I demand a recorded vote.

A recorded vote was ordered.

The SPEAKER pro tempore. This is a 5-minute vote.

The vote was taken by electronic device, and there were—ayes 218, noes 210, not voting 6, as follows:

[Roll No. 337]

AYES—218

Abraham	Allen	Arrington
Aderholt	Amodei	Babin

Bacon	Graves (GA)	Palmer
Banks (IN)	Graves (LA)	Paulsen
Barletta	Graves (MO)	Pearce
Barr	Grothman	Perry
Barton	Guthrie	Pittenger
Bergman	Handel	Poliquin
Biggs	Harper	Ratcliffe
Bilirakis	Harris	Reed
Bishop (MI)	Hartzer	Reichert
Bishop (UT)	Hensarling	Rice (SC)
Black	Herrera Beutler	Roby
Blackburn	Hice, Jody B.	Roe (TN)
Blum	Higgins (LA)	Rogers (AL)
Bost	Hill	Rogers (KY)
Brady (TX)	Holding	Rohrabacher
Brat	Hollingsworth	Rokita
Bridenstine	Hudson	Rooney, Francis
Brooks (AL)	Huizenga	Rooney, Thomas
Brooks (IN)	Hultgren	J.
Buchanan	Hunter	Roskam
Buck	Hurd	Ross
Bucshon	Issa	Rothfus
Budd	Jenkins (KS)	Rouzer
Burgess	Jenkins (WV)	Royce (CA)
Byrne	Johnson (LA)	Rutherford
Calvert	Johnson (OH)	Ryan (WI)
Carter (GA)	Johnson, Sam	Sanford
Carter (TX)	Jordan	Schweikert
Chabot	Joyce (OH)	Scott, Austin
Chaffetz	Katko	Sensenbrenner
Cheney	Kelly (MS)	Sessions
Coffman	Kelly (PA)	Shimkus
Cole	King (IA)	Shuster
Collins (GA)	King (NY)	Simpson
Collins (NY)	Kinzinger	Smith (MO)
Comer	Knight	Smith (NE)
Comstock	Labrador	Smith (NJ)
Conaway	LaHood	Smith (TX)
Cook	LaMalfa	Smucker
Cramer	Lamborn	Stefanik
Crawford	Lance	Stewart
Culberson	Latta	Taylor
Davidson	Lewis (MN)	Tenney
Davis, Rodney	LoBiondo	Thompson (PA)
Denham	Loudermilk	Thornberry
Dent	Love	Tiberi
DeSantis	Lucas	Tipton
DesJarlais	Luetkemeyer	Trott
Diaz-Balart	MacArthur	Turner
Donovan	Marchant	Upton
Duffy	Marshall	Valadao
Duncan (SC)	Mast	Wagner
Dunn	McCarthy	Walberg
Estes (KS)	McCaul	Walden
Farenthold	McClintock	Walker
Faso	McHenry	Walorski
Ferguson	McKinley	Walters, Mimi
Fitzpatrick	McMorris	Weber (TX)
Fleischmann	Rodgers	Wenstrup
Flores	Flores	Westerman
Fortenberry	Messer	Williams
Foxx	Mitchell	Wilson (SC)
Franks (AZ)	Moolenaar	Wittman
Frelinghuysen	Mooney (WV)	Womack
Gaetz	Mullin	Woodall
Gallagher	Murphy (PA)	Yoder
Gianforte	Newhouse	Yoho
Gibbs	Noem	Young (AK)
Goodlatte	Norman	Young (IA)
Gosar	Nunes	Zeldin
Gowdy	Olson	
Granger	Palazzo	

NOES—210

Adams	Castro (TX)	DeLauro
Aguilar	Chu, Judy	DelBene
Amash	Cicilline	Demings
Barragán	Clark (MA)	DeSaulnier
Bass	Clarke (NY)	Deutch
Beatty	Clay	Dingell
Bera	Cleaver	Doggett
Beyer	Clyburn	Doyle, Michael
Bishop (GA)	Cohen	F.
Blumenauer	Connolly	Duncan (TN)
Blunt Rochester	Conyers	Ellison
Bonamici	Cooper	Emmer
Boyle, Brendan	Correa	Engel
F.	Costa	Eshoo
Brady (PA)	Costello (PA)	Españat
Brown (MD)	Courtney	Esty (CT)
Brownley (CA)	Crist	Evans
Bustos	Crowley	Foster
Butterfield	Cuellar	Frankel (FL)
Capuano	Curbelo (FL)	Fudge
Carbajal	Davis (CA)	Gabbard
Cárdenas	Davis, Danny	Gallego
Carson (IN)	DeFazio	Garamendi
Cartwright	DeGette	Garrett
Castor (FL)	Delaney	Gohmert

Gonzalez (TX) Lujan Grisham, Roybal-Allard
 Gottheimer M. Ruiz
 Green, Al Luján, Ben Ray Ruppertsberger
 Green, Gene Lynch Russell
 Griffith Maloney, Ryan (OH)
 Grijalva Carolyn B. Sánchez
 Gutiérrez Maloney, Sean Sarbanes
 Hanabusa Marino Schakowsky
 Hastings Massie Schiff
 Heck Matsui Schneider
 Higgins (NY) McCollum Schrader
 Himes McEachin Scott (VA)
 Hoyer McGovern Scott, David
 Huffman McNerney Serrano
 Jackson Lee McSally Sewell (AL)
 Jayapal Meehan Shea-Porter
 Jeffries Meeks Sherman
 Johnson (GA) Meng Sinema
 Johnson, E. B. Moore Moulton
 Jones Sires
 Kaptur Murphy (FL)
 Keating Nadler Smith (WA)
 Kelly (IL) Neal Soto
 Kennedy Nolan Speier
 Khanna Norcross Suozzi
 Kihuen O'Rourke Swalwell (CA)
 Kildee Pallone Takano
 Kilmer Panetta Thompson (CA)
 Kind Pascrell Titus
 Krishnamoorthi Payne Tonko
 Kuster (NH) Pelosi Torres
 Kustoff (TN) Perlmutter Tsongas
 Langevin Peters Vargas
 Larsen (WA) Peterson Veasey
 Larson (CT) Pingree Vela
 Lawrence Pocan Velázquez
 Lawson (FL) Poe (TX) Visclosky
 Lee Pollis Walz
 Levin Posey Wasserman
 Lewis (GA) Price (NC) Schultz
 Lieu, Ted Quigley Waters, Maxine
 Lipinski Raskin Watson Coleman
 Loeb sack Rice (NY) Webster (FL)
 Lofgren Richmond Welch
 Lowenthal Ros-Lehtinen Wilson (FL)
 Lowey Rosen Yarmuth

NOT VOTING—6

Cummings Napolitano Scalise
 Long Renacci Stivers

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore (during the vote). There are 2 minutes remaining.

□ 1719

So the bill was passed.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

ROBERT EMMET PARK ACT OF 2017

The SPEAKER pro tempore. The unfinished business is the vote on the motion to suspend the rules and pass the bill (H.R. 1500) to redesignate the small triangular property located in Washington, DC, and designated by the National Park Service as reservation 302 as “Robert Emmet Park”, and for other purposes, on which the yeas and nays were ordered.

The Clerk read the title of the bill.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from California (Mr. Cook) that the House suspend the rules and pass the bill.

This is a 5-minute vote.

The vote was taken by electronic device, and there were—yeas 423, nays 0, not voting 10, as follows:

[Roll No. 338]
 YEAS—423
 DeGette Johnson (GA)
 Delaney Johnson (LA)
 DeLauro Johnson (OH)
 DelBene Johnson, E. B.
 Demings Johnson, Sam
 Denham Jones
 Dent Jordan
 DeSantis Joyce (OH)
 DeSaulnier Kaptur
 DesJarlais Katko
 Deutch Keating
 Diaz-Balart Kelly (IL)
 Dingell Kelly (MS)
 Doggett Kelly (PA)
 Donovan Kennedy
 Doyle, Michael Khanna
 F. Kihuen
 Duffy Kildee
 Duncan (SC) Kilmer
 Duncan (TN) Kind
 Dunn King (IA)
 Ellison King (NY)
 Emmer Kinzinger
 Engel Knight
 Eshoo Krishnamoorthi
 Espallat Kuster (NH)
 Estes (KS) Kustoff (TN)
 Esty (CT) Labrador
 Evans LaHood
 Farenthold LaMalfa
 Faso Lamborn
 Ferguson Lamborn
 Fitzpatrick Lance
 Fleischmann Langevin
 Flores Larsen (WA)
 Fortenberry Larson (CT)
 Foster Latta
 Foxx Lawrence
 Frankel (FL) Lawson (FL)
 Franks (AZ) Lee
 Frelinghuysen Levin
 Fudge Lewis (GA)
 Gabbard Lewis (MN)
 Gaetz Lieu, Ted
 Gallagher Lipinski
 LoBiondo LoBiondo
 Gallego Loeb sack
 Garamendi Lofgren
 Garrett Loudermilk
 Gianforte Love
 Gibbs Lowenthal
 Gohmert Lowey
 Gonzalez (TX) Lucas
 Goodlatte Luetkemeyer
 Gosar Lujan Grisham,
 Gottheimer M.
 Gowdy Luján, Ben Ray
 Granger Lynch
 Graves (GA) MacArthur
 Graves (LA) Maloney,
 Graves (MO) Carolyn B.
 Green, Al Maloney, Sean
 Green, Gene Marchant
 Griffith Marino
 Grijalva Marshall
 Grothman Massie
 Guthrie Mast
 Gutiérrez Matsui
 Hanabusa McCarthy
 Handel McCaul
 Harper McClintock
 Harris McCollum
 Hartzler McEachin
 Hastings McGovern
 Heck McHenry
 Hensarling McKinley
 Herrera Beutler McMorris
 Hice, Jody B. Rodgers
 Higgins (LA) McNerney
 Higgins (NY) McSally
 Hill Meadows
 Himes Meehan
 Holding Meeks
 Hollingsworth Meng
 Hoyer Messer
 Hudson Mitchell
 Huffman Moolenaar
 Crist Mooney (WV)
 Crowley Hultgren Moore
 Cuellar Hunter Moulton
 Culberson Hurd Mullin
 Curbelo (FL) Issa Murphy (FL)
 Davidson Jackson Lee Murphy (PA)
 Davis (CA) Jayapal Nadler
 Davis, Danny Jeffries
 Davis, Rodney Jenkins (KS)
 DeFazio Jenkins (WV)

Nolan Rothfus Thompson (CA)
 Norcross Rouzer Thompson (MS)
 Norman Roybal-Allard Thompson (PA)
 Nunes Royce (CA) Thornberry
 O'Halleran Ruiz Tiberi
 O'Rourke Ruppertsberger Tipton
 Olson Rush Titus
 Palazzo Russell Tonko
 Pallone Rutherford Torres
 Palmer Ryan (OH) Trotter
 Panetta Sánchez Tsongas
 Pascrell Sanford Turner
 Paulsen Sarbanes Upton
 Payne Schakowsky Valadao
 Pearce Schiff Vargas
 Pelosi Schneider Veasey
 Perlmutter Schrader Vela
 Perry Schweikert Velázquez
 Peters Scott (VA) Visclosky
 Peterson Scott, Austin Wagner
 Pingree Scott, David Walberg
 Pocan Sensenbrenner Walden
 Poe (TX) Serrano Walker
 Poliquin Sessions Walorski
 Polis Sewell (AL) Walters, Mimi
 Posey Shea-Porter Walz
 Price (NC) Sherman Wasserman
 Quigley Shimkus Schultz
 Raskin Shuster Waters, Maxine
 Ratcliffe Simpson Watson Coleman
 Reed Sinema Weber (TX)
 Reichert Sires Webster (FL)
 Rice (NY) Slaughter Smith (MO)
 Rice (SC) Smith (NE)
 Richmond Smith (NJ)
 Roby Smith (TX)
 Roe (TN) Smith (WA)
 Rogers (AL) Smucker Soto
 Rogers (KY) Soto Speier
 Rohrabacher Soto Stefanik
 Rokita Stewart Yarmuth
 Rooney, Francis J. Stewart Yoder
 Ros-Lehtinen Swallow Yoho
 Rosen Takano Young (AK)
 Roskam Taylor Young (IA)
 Ross Tenney Zeldin

NOT VOTING—10

Burgess Napolitano Stivers
 Castor (FL) Pittenger Woodall
 Cummings Renacci
 Long Scalise

□ 1727

Ms. ROYBAL-ALLARD changed her vote from “nay” to “yea.”

So (two-thirds being in the affirmative) the rules were suspended and the bill was passed.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

PERSONAL EXPLANATION

Mrs. NAPOLITANO. Mr. Speaker, I was absent during rollcall votes No. 334, No. 335, No. 336, No. 337, and No. 338 due to my spouse's health situation in California. Had I been present, I would have voted “nay” on the Hudson Amendment. I would have also voted “nay” on the Barr Amendment. I would have also voted “yea” on the Democratic Motion to Recommit H.R. 1215. I would have also voted “nay” on the Final Passage of H.R. 1215—Protecting Access to Care Act of 2017. I would have also voted “yea” on H.R. 1500—Robert Emmet Park Act of 2017.

RECOGNIZING THE CENTRAL ASSOCIATION FOR THE BLIND AND VISUALLY IMPAIRED

(Ms. TENNEY asked and was given permission to address the House for 1 minute and to revise and extend her remarks.)